

## Chapter C. Charter

[HISTORY: Adopted by Chapter 438, Acts of 1920. Amendments noted where applicable.]

### GENERAL REFERENCES

Boards, committees and commissions — See Ch. 11.

Settlement of claims — See Ch. 19.

Continuity of government — See Ch. 22.

Ethics — See Ch. 33.

Officers and employees — See Ch. 62.

Police Department — See Ch. 68.

### Ca Schedule of Laws Repealed

## Article I. General Provisions

### § C-1. Incorporation and name; boundaries.

- A. The citizens of the State of New York from time to time inhabitants of that part of the County of Cayuga included within the City of Auburn, as the same is now constituted and bounded, are, and are continued, a municipal corporation in perpetuity under the name of "The City of Auburn."
- B. The territory of such City shall be as follows:
  - (1) BEGINNING at the point of intersection of the center of the Owasco Outlet with the south line of Great Lot 47; thence easterly and along the south lines of Great Lot 47 and part of Great Lot 48, also being along the center line of Havens Avenue a distance of 4,330', more or less, to a point of intersection of the said south line of Great Lot 48 and the west line of the Town of Sennett, said point also being the present terminus of the center line of South Hunter Avenue; thence northerly along the center line of South Hunter Avenue 3,310', more or less, to a point in the west line of the Town of Sennett, said point also being the southwest corner of lands annexed to the City of Auburn from the Town of Sennett as shown on a map of annexation dated April 4, 1982; thence easterly at a deflection angle to the right of 89° 05' with the last described line a distance of 291.01' to a point; thence at an interior angle of 90° 08' 30" with the last described line a distance of 479.12' to a point; thence at an interior angle of 90° 46' 30" with the last described line a distance of 182.49' to a point; thence at an interior angle of 153° 48' with the last described line a distance of 55.72' to a point; thence at an interior angle of 296° 12' with the last described line a distance of 80.00' to a point; thence at an interior angle of 90° 00' with the last described line a distance of 52.00' to a point in the west line of the Town of Sennett, said point also being in the east line of the City of Auburn; thence northerly at an interior angle of 90° with the last described line a distance of 560', more or less, to a point in the south line of Great Lot 29 and the north line of Great Lot 39; thence westerly along the south lines of Great Lots 29, 28 and 27 a distance of 13,526.79', more or less, to a point in the south line of Great Lot 26, said point being 680', more or less, westerly of the intersection of Great Lots 26, 27, 36 and 37, said point also being the southeast corner of lands annexed to the City of Auburn from the Town of Throop as shown on a map of annexation dated February 10, 1987; thence at a deflection angle to the right of 79° 40' with the last described line a distance of 325.52' to a point; thence at an interior angle of 280° 52' with the last described line a distance of 450.00' to a point in the center line of North Division Street Road; thence at an interior angle of 79° 08' with the last described line and along the center line of North Division Street Road a distance of 60.81' to a point; thence at an interior angle of 100° 52' with the last described line a distance of 572.61' to a point; thence at an interior angle of 259° 08' with

the last described line a distance of 684.63' to a point; thence at an interior angle of 100° 52' with the last described line a distance of 1,087.71' to a point; thence at an interior angle of 270° 11' 30" with the last described line a distance of 1,042.45' to a point; thence at an interior angle of 90° 06' with the last described line a distance of 1,372.02' to a point; thence at an interior angle of 90° 07' 30" with the last described line a distance of 2,127.33' to a point in the north line of Great Lot 26; thence easterly along the north line of Great Lot 26 a distance of 840', more or less, to a point; thence southerly and along the west line of the City of Auburn and also the east line of the Town of Aurelius a distance of 6,255.86', more or less, to a point, said point being the northeast corner of lands annexed to the City of Auburn from the Town of Aurelius as shown on a map of annexation dated February 10, 1987; thence at a deflection angle to the right of 86° 41' 27" with the last described line a distance of 471 32' to a point; thence southerly at an interior angle of 93° 18' 33" with the last described line a distance of 1,687.26' to a point in the center line of Clark Street Road; thence easterly at an interior angle of 79° 08' with the last described line and along the center line of Clark Street Road a distance of 479.12' to a point, said point being in the east line of the Town of Aurelius and also being in the west line of the City of Auburn; thence southerly along said division line between the Town of Aurelius and the City of Auburn a distance of 7,716.88', more or less, to a point in the south line of Great Lot 55; thence easterly and along the south lines of Great Lots 55, 56 and part of Great Lot 57 a distance of 11,100.7', more or less, to a point, said point also being the northwest corner of lands annexed to the City of Auburn from the Town of Fleming as shown on a map of annexation dated December 15, 1982; thence at a deflection angle to the right of 77° 14' with the last described line a distance of 546.7' to a point; thence at an interior angle of 160° 40' with the last described line a distance of 314' to a point; thence at an interior angle of 168° 13' with the last described line a distance of 1,502.0' to a point, thence at an interior angle of 89° 56' with the last described line a distance of 653.8' to a stone monument on the west bank of the Owasco Outlet; thence at an interior angle of 74° 25' with the last described line a distance of 197' to a point; thence at an exterior angle of 146° 44' with the last described line a distance of 337.4' to a point; thence at an exterior angle of 132° 49' with the last described line a distance of 400' to a point; thence at an exterior angle of 143° 17' with the last described line a distance of 295.45' to a point; thence at an interior angle of 172° 02' with the last described line a distance of 180.45' to a point; thence at an interior angle of 102° 00' with the last described line a distance of 95' to a point; thence at an interior angle of 153° 20' with the last described line a distance of 237' to a point; thence at an exterior angle of 157° 58' with the last described line a distance of 67.8' to a point; thence at an exterior angle of 165° 43' with the last described line a distance of 71' to a stone monument; thence easterly and at a deflection angle to the right of 108° 41' with the last described line a distance of 45', more or less, to the center line of the Owasco Outlet; thence northerly and along the center line of the Owasco Outlet as it winds and turns a distance of 6,094', more or less, to the point and place of beginning.

- (2) BEING AND INTENDING TO BE all of the lands situate in the City of Auburn as established by Chapter 488, § 1 of the Laws of 1920 and annexations to the City of Auburn subsequent thereto.

## § C-2. Powers of City.

- A. The City of Auburn shall be a body politic and corporate and shall have perpetual succession; may use a corporate seal; may sue and be sued; may acquire property within and without its boundaries for any municipal purpose in fee simple or any lesser interest or estate by purchase, gift, devise, lease or condemnation; and may sell, lease, hold, manage and control such property as its interest may require. The City of Auburn shall have all municipal powers, functions, rights, privileges and immunities of every name and nature wheresoever conferred on cities by the Constitution of the State of New York and conferred or imposed on it by general or special law.
- B. The enumeration of particular powers in this Charter shall not be deemed to be exclusive, but in addition to the powers enumerated or implied herein or appropriate to the exercise of such powers, the City of Auburn shall have and may exercise all powers which under the Constitution of the State of New York it would be competent for this Charter specifically to enumerate, and all powers necessarily incident or fairly to be implied, not inconsistent with the provisions hereof. All powers of the City of Auburn, whether expressed or implied, shall be exercised in the manner specifically provided in this Charter or, if not so provided, then in the manner provided by local law, ordinance or resolution of the Council or as otherwise provided by law.

## § C-3. Election districts.

The Council shall create, consolidate, divide or alter the election districts within the City in accordance with the Election Law.

## Article II. Officers, Powers and Duties

### § C-4. Elective officers; qualifications.

The City of Auburn having adopted the simplified form of government, defined as Plan C under the Optional City Government Law, known as Chapter 444 of the Laws of 1914, the elective officers of such City are a Mayor and four Councilors, all of whom shall be elected by the qualified voters of all of the City. All such elective officers shall at the time of nomination be citizens of the United States and residents of the City. The removal of any such officer from the City during his or her term of office shall render the office held by him or her vacant.

### § C-5. Terms of elective officers.

The terms of office of the Mayor and Councilors, hereafter elected, shall be four years each. The terms of all such elective officers shall begin on the first day of January, following their election.

### § C-6. Nomination and election of elective officers.

The Election Law of the State of New York shall apply to the nomination and election of all elective officers of the City.

### § C-7. Council; compensation.

The Mayor and the four Councilors shall constitute the Council of the City of Auburn, in which is vested all the legislative power of the City however conferred or possessed. As such Council, they shall possess all the powers and perform all the duties provided in the said Optional City Government Law for the Council under Plan C thereof, in other general statutes of the State, in this Charter, and in any other special or local act relating to the City of Auburn and shall have power by local law, ordinance or resolution to carry into force and effect all the powers belonging to, or conferred upon, the City or the Council, by general or special law or otherwise. They shall receive as compensation an annual salary payable pursuant to the compensation pay plan enacted by the Council.

### § C-8. Meetings of Council.

[Amended 3-22-2007 by L.L. No. 3-2007; 6-7-2012 by L.L. No. 2-2012]

Regular meetings of the Council shall be held on a designated day each week, each month. Special meetings may be held at any time on unanimous consent, or may be called at any time by any member upon two days' notice. Such call shall be signed and immediately filed with the City Clerk. The Council shall have power at any of its meetings to adjourn to any time and place it may deem proper. The Council may adopt rules governing its proceedings and provide for the enforcement thereof.<sup>[1]</sup>

[1] *Editor's Note: The Rules and Procedures of the Auburn City Council are on file in the office of the City Clerk.*

### § C-9. City Manager and Assistant City Manager.

- A. The Council shall appoint a City Manager who shall possess the powers and perform the duties provided in and by said Optional City Government Law, other general laws of the state, and the ordinances of the Council of

the City. He or she shall hold office during the pleasure of the Council and receive compensation fixed by the Council.

- B. The City Manager shall appoint an Assistant City Manager. The Assistant City Manager is authorized to act generally for and in the place of the City Manager and, in the absence, disability or vacancy in the office of the City Manager, shall serve as Acting City Manager. The Assistant City Manager shall be appointed on the basis of his or her training and experience in the field of public administration or related fields.

[Amended by L.L. No. 3-1991]

## **§ C-10. City Clerk; Deputy City Clerk; Civil Service Commission.**

[Amended 12-22-1994 by L.L. No. 4-1994; 9-26-1996 by L.L. No. 2-1996]

- A. The Council shall appoint a City Clerk, Deputy City Clerk and three Civil Service Commissioners and may appoint such other officers as may be provided in said Optional City Government Law.
- B. The City Clerk and the Deputy City Clerk shall have such powers and perform such duties as are prescribed by said Optional City Government Law, and otherwise by law, and as the Council may from time to time prescribe. The City Clerk and Deputy City Clerk shall hold office during the pleasure of the Council and receive such salary as shall be fixed by the Council.
- C. The Deputy City Clerk shall, from time to time when required, act for and in place of the City Clerk.

## **§ C-11. Civil Service Commissioners.**

[Amended 6-24-1993 by L.L. No. 2-1993; 2-8-1996 by L.L. No. 1-1996]

At the expiration of the term of each of the present Civil Service Commissioners, there shall be appointed by the Council a Civil Service Commissioner to serve for six years. The salary of such Commissioners shall be fixed by the Council of the City. Such Civil Service Commissioners shall have the powers and perform the duties imposed by law on Civil Service Commissioners. Not more than two members of the Commission shall be adherents of the same political party. Any Civil Service Commissioner may be removed at any time by a unanimous vote of the Council by resolution stating the reason for such removal and after such Commissioner has been given an opportunity of making an explanation.

## **§ C-12. Appointive officers and employees.**

The Council may, from time to time, determine and provide what other City officers and employees are necessary for the administration of the City, and the same shall be appointed by the City Manager. Any such officer or employee may be removed by the City Manager at any time. Each such appointment and removal shall be reported to the Council by the City Manager at the next meeting thereof following such appointment or removal. Except as otherwise provided in this Charter, the Mayor shall appoint all members of all boards and commissions of the City.

## **§ C-13. Abolition, change or consolidation of offices and positions.**

The Council may, from time to time, as it deems it advisable, abolish, change or consolidate any office or position of the City and determine whether the continuance of any such office or position is essential. It may authorize the appointment of deputies, assistants or clerks to any officer.

## **§ C-14. Acceptance by officer of another office.**

The acceptance by any officer of the City of any other City office shall vacate his first office.

## § C-15. Delivery of property and papers upon termination of office or position.

Any officer or employee of the City who shall have resigned, or shall have been removed from office, or whose term of office shall have expired, shall deliver to the City Manager forthwith all property, papers and effects of every description in his or her possession, or under his or her control, which belong to the City, or which appertain to the office held by him or her. In case of the resignation or removal of the City Manager, he or she shall forthwith deliver all like property, papers and effects to the Mayor.

## § C-16. Designation and modification of powers and duties of officers.

The Council may by ordinance creating or continuing the various other offices in the City define and state the powers of each such officer, and the duties to be performed, which said powers and duties may, from time to time, be changed, amended or otherwise modified as the Council may deem advisable.

## § C-17. General powers and duties of officers and employees.

In addition to the powers and duties conferred or imposed upon any officer by this Charter, each officer and employee shall perform such duties, exercise such functions and have such powers as are conferred or imposed by law upon such officers generally performing like duties and shall have such additional powers and perform such additional duties as may be conferred or imposed by ordinance of the Council.

## § C-18. Compensation of officers and employees.

The Council shall fix the salary or compensation of all persons in the service of the City and the time of payment thereof. It may authorize the City Manager to fix the salaries of laborers necessary or essential in his or her judgment in the various departments of the City.

## § C-19. Fees in addition to salary prohibited.

No salaried officer of the City shall have or receive to his or her own use any compensation or fees for services pertaining directly or indirectly to the duties of his or her office, in addition to his or her salary, and all perquisites, compensation and fees paid to, or received by, any such officer for services pertaining directly or indirectly to his or her office, other than his or her salary received from the City, shall be the property of the City and shall be paid by the officer receiving the same into the City treasury.

## § C-20. Financial interest in contracts with or claims against City prohibited.

No member of the Council or officer or employee of the City shall be pecuniarily interested in any contract, directly or indirectly, in which the City is a party, nor furnish for pay or compensation, directly or indirectly, to the City for its use any goods, wares, merchandise, labor, materials or supplies, nor be interested, directly or indirectly, in any bill or claim, under the penalty of loss of his or her claim except as provided in Article 18 of the General Municipal Law.<sup>[2]</sup>

[1] *Editor's Note: See also Ch. 33, Ethics.*

[2] *Editor's Note: Original § 21, pertaining to Supervisors, which immediately followed this section, was deleted since the County of Cayuga has established a County Legislature.*

## § C-21. Oath of office; resignation.

Every officer shall, before entering upon the discharge of his or her duties, take and file in the office of the City Clerk the constitutional oath of office. Any officer may resign at any time by filing his or her written resignation with the City Clerk.

## § C-22. Bonds; amount, approval and payment of premium.

The Council may require any officer or employee of the City before assuming his or her duties to execute a bond to the City in such sum as it may fix, to be approved as to execution and sufficiency of surety by the City Manager, excepting the bond of the City Manager, which shall be approved by the Mayor. When so approved such bonds shall be filed in the office of the City Clerk. All officers or employees may, from time to time, be required to furnish additional or new bonds. The Council may in its discretion provide for the payment of the premium upon such official bonds.

## § C-23. Vacancy in elective office.

Any vacancy in the office of Mayor or Councilman shall be filled as prescribed by the said Optional City Government Law. Any vacancy in any other elective office shall be temporarily filled by appointment of the Council. Such temporary appointment shall continue in effect until the first day of January next following the next general election held after such appointment. At the next general election following any such vacancy in an elective office, except the City Judge or Associate City Judge,<sup>[1]</sup> a successor shall be elected to serve the unexpired portion of the term for which the vacating officer was elected, or as herein fixed, unless such term shall expire on or before the first day of January next following such general election, in which case such successor shall be elected for the full term.

[1] *Editor's Note: For filling a vacancy in the office of City Judge, see the Uniform City Court Act, § 2104(f)(2).*

## § C-24. Acting Mayor; disability of appointive officer.

- A. Whenever the Mayor shall be temporarily unable for any cause to perform the duties of his or her office, the Council may appoint one of its members to exercise the powers and perform the duties of the Mayor during such absence or disability.
- B. Should any appointive officer be temporarily unable for any cause to perform his or her duties, the body or the officer having the power of original appointment may make a temporary appointment of some person to act until such official shall resume his or her duties.

## § C-25. Enumeration of powers.

- A. In addition to all other powers conferred by law, the City of Auburn, and the Council of the City, on its behalf, shall have power:
  - (1) Contracts; suits. To contract and be contracted with and to institute, maintain and defend any action or proceeding in any court.
  - (2) Acquisition, retention, and disposal of property. To take, purchase, acquire, lease and hold real and personal property, or either, within or without the corporate limits, for any public or municipal purpose, and to sell, convey and lease the same, or any part thereof, and to provide for the management and control of such property and designate the particular purpose to which it shall be devoted.
  - (3) Gifts; administering of property. To take by gift, grant or devise, and to hold and administer, real and personal property, or either, within or without the corporate limits, absolutely or in trust, for any public or municipal purpose, upon such terms as may be prescribed by the grantor or donor and accepted by the City.
  - (4) Sinking funds. To provide, establish and maintain sinking funds for the liquidation of any bonds issued prior to January 1, 1939, and serial bonds issued subsequent to such date.

- (5) Satisfaction of claims. To pay any claim due or owing by the City, or a binding obligation upon it; to pay any judgment recovered against the City, providing the funds therefor, in whole or in part, either by taxation or pursuant to the Local Finance Law; and to pay or compromise any claim equitably payable by the City although not a binding legal obligation.
- (6) Taxes and assessments. Subject to the provisions of general law, and of this Charter, to assess, levy and collect taxes on real and personal property within the City, for the various purposes authorized or contemplated by this Charter, and otherwise by law; to assess, levy and collect, as tax, the charges or cost of all local improvements; if not otherwise provided herein, to provide for the payment of the cost of any local improvement to or for the benefit of any property by assessment against such property, and for the payment of such assessment; and to declare and provide that the cost of all local improvements, or of any other work or benefit to or for abutting property, as determined by it, shall be a lien upon the property which, if not paid, may be added to the City tax roll and collected as delinquent taxes by sale, auction or foreclosure.
- (7) Reserve for uncollected taxes. To raise by real property taxes for each fiscal year hereafter such sum as it may deem sufficient to produce in cash an amount equal to the anticipated deficiency in the collection of City taxes on real property required to be collected by the City in such fiscal year. Such sum shall be known as the "reserve for uncollected real property taxes."
- (8) Assessments; maps. Subject to the provisions of law, to provide for making assessments of property, and to provide and establish a uniform system or method thereof; and to provide for, and have made, maps of the City showing the various streets, highways, lots and parcels, or any part of them.
- (9) Records, accounts, and affairs of City. To regulate the method and manner of transacting the City's business and affairs; to provide, establish and maintain a system of records and accounts; and to provide and establish a uniform system of examination and audit of claims.
- (10) Rights and franchises. To grant rights and franchises, or permission, to use the streets, highways and public places, or any part thereof, or the space above or under them, or any of them, for any specified purpose, upon such terms and conditions as it may deem proper, and as may be permitted by law.
- (11) Condemnation of property. To acquire by condemnation proceedings, conducted as provided by law, any lands or rights needed or required for any municipal purpose.
- (12) Commissioners of Deeds. To determine the number of Commissioners of Deeds for the City and direct their appointment.
- (13) Streets, highways and public places. To pave, repave, surface and resurface streets, highways and public places, to provide for the payment thereof, in whole or in part, as a general City charge, or partly as a general City charge and partly as a local assessment on abutting property, as in this Charter provided; to open, extend, widen and straighten streets, highways and lanes, to acquire necessary lands and rights therefor, and to provide for the determination and assessment of the cost thereof upon the real property benefited, as in this Charter provided; and to build, cover with hard material, macadamize and improve other than as hereinbefore provided, and to repair, level, grade, alter, clean and maintain streets, highways, alleys, lanes and squares, and to sprinkle, flush, cover with a dust-allaying substance, and oil such streets, highways, alleys, lanes and squares, or any part thereof, and to provide for the payment thereof as a general charge.
- (14) Sidewalks, curbs and gutters. To construct, build, flag, surface, resurface, alter, repair, grade, regrade, maintain, care for and clean sidewalks, curbs and gutters in public streets; to direct and order, as herein provided, any such work or improvement to be done by the property owner or occupant and, on default, to have the same done by the City and charged or assessed against the abutting property; to regulate and prescribe the grade, width, materials, construction and other specifications of any such work; at the request of the property owner, to have any such work or improvement done by the City, or by contract, to pay for the same from City funds, and assess such total cost against the property benefited; and to provide that the cost of any such work or improvement be paid at once or in annual installments.
- (15) Street names; house numbering. To designate streets by name, and houses and lots by number, and from time to time to change such designations and numbers; and to require owners and occupants of lots and

buildings to place thereon or in a prominent place the designated number.

- (16) Removal of snow, ice, dirt, etc. To require the owners and occupants of lots abutting on streets to keep the sidewalks in front of such premises free and clear of all snow, ice, dirt and other obstruction, and to remove from such sidewalk any dirt, rubbish, snow or ice which may be thereon, and all accumulations of dirt and rubbish between the sidewalk and the center of the street; to require such owner and occupant to keep such walk in a safe condition for public travel and to repair and remedy all defects; and to require the owners and occupants of lots fronting upon streets to keep the grass, and grass plots, along the traveled portions of streets cut and trimmed, to cut all noxious weeds, long grass and other rank growths, and to erect barriers or safeguards along the line of such streets at dangerous points.
- (17) Underground conduits and subways; overhead wires and cables. To lay out, establish, maintain, build, acquire, operate and continue subways and underground conduits for wires and cables; to control, manage, lease, and operate all such subways and underground conduits now owned by the City or hereafter acquired; to regulate and control the occupancy thereof; to provide rules, regulations and bylaws for the management, care and use of such subways, conduits and appurtenances thereto, and to establish and promulgate rates and rentals therefor, and to make and execute leases covering the use and occupancy thereof; to prohibit and restrain any improper or unwarranted interference with such subways, conduits and appurtenances, including manholes and manhole covers; to control and regulate, or cause to be removed, all overhead telegraph, electric light, power and telephone wires, cables and other electrical conductors and poles in or adjacent to all streets, or part of streets, in which said subways or conduits furnish adequate facilities for carrying such wires and cables; and to direct and require that all such wires, cables and other overhead electrical conductors be placed in such subways or conduits.
- (18) Sewers and drains. To lay out, establish, build, rebuild, continue, operate, control, alter, repair, clean, extend, discontinue and maintain sewers, drains, laterals and sewage disposal plants, and to provide for the cost thereof as in this subsection provided; to create, continue, alter, amend and change sewer districts and make, direct and provide that the cost of building and rebuilding sewers and drains therein shall be paid by assessment upon the real property of such districts, as in this Charter provided; to make, direct and provide that the cost of building and rebuilding all sewers and drains which are outside of sewer districts shall be paid by local assessment upon the property thereby benefited in proportion to the benefits received; to make, direct and provide that the cost of building and rebuilding sewage disposal plants and the cost of maintaining, operating and cleaning all sewage disposal plants and all public sewers and drains, whether within a sewer district or not, be a general City charge; to operate, manage and control all public sewers, drains, sewer systems and sewage disposal plants, whether built pursuant to the provisions of special laws or not; and to provide that sewers intended and designed for storm- or surface water exclusively may be a general City charge, whether situated in sewer districts or not, anything in this Charter to the contrary notwithstanding.
- (19) Private sewers and drains. To regulate, control and prohibit the construction, maintenance and use of private sewers and drains in public streets and to order the discontinuance and removal thereof; to prescribe terms and conditions upon which such sewers and drains may be constructed, continued and used; and to require the same to be kept in proper and sanitary condition by the owners and users.
- (20) Structures for public use. To lay out, establish, construct, alter, repair, continue, discontinue, operate, build and maintain public buildings, fire houses, police stations, parks, playgrounds, markets, public places, bridges and other structures deemed needful or convenient for public use.
- (21) Leases. To provide for the leasing of buildings, or parts thereof, for City purposes and to make such leases.
- (22) Trees, shrubbery and playground equipment. To provide for the planting, trimming, protecting, removing and preserving of trees in streets, parks and other public places of the City; and to prohibit any injury, defacement, mutilation or destruction of trees, shrubs, or grass plots in public streets or places, or park or playground equipment.
- (23) Planning. To provide for a City Planning Commission, with advisory powers in reference to public improvements, streets, parks and other matters of general welfare, and to provide for the expense thereof.
- (24) Water supply and charges. To furnish and supply the City of Auburn, and the people thereof, with a



sufficient quantity of good and wholesome water, except that no fluoride or fluoride solution shall be added to or be made part of the water supply of the City of Auburn, and for that purpose to take over, manage, operate, continue, discontinue and extend the present water system of the City, with all of the plant, equipment, mains, machinery, apparatus and devices used, employed, owned or controlled by the City through its Water Department in the supplying of the City with water, including the filtration plant, and to take and conduct water, and continue to take and conduct water, from Owasco Lake through the pipes and mains now laid and in use, or hereafter laid or used, to the City, subject to the rights and obligations specified in Chapter 341 of the Laws of 1903; to enlarge, increase, contract and extend such system and to provide therefor machinery, pumps, mains and other necessary equipment, supplies, devices and apparatus; to employ all labor and help necessary in supplying such water; to furnish water to owners and occupants of property lying outside of but adjacent to the City of Auburn; to buy, sell or acquire by condemnation or otherwise all rights and property needed or essential in the maintenance, control and extension of such system and to sell, lease and convey the same, or any part thereof; to adopt, continue and enact, and from time to time change, ordinances, rules, regulations and bylaws for the preservation and protection of such water works, system, property and shed, and the sources from which such water is or may be furnished, and to prescribe and impose penalties, fines and punishment for any violation or infringement thereof; to continue the present sinking fund for the retirement of water bonds and to provide for payments thereto; to prescribe and establish rates and rentals for the use of water and charges for service and from time to time to alter, amend, modify, increase and diminish such charges, rates and rents; and to provide that unpaid water rates and rentals and charges shall become and be liens upon the property to which such water was furnished, or service rendered, and that if the same remain unpaid they may be added to the annual City tax to be thereafter known as tax, and collected in the same manner as taxes.

- (25) Water distribution. To preserve and protect all hydrants, drinking fountains, and all equipment, machinery and apparatus used in the distribution of water; and to prohibit any injury thereto and any tampering or interference therewith.
- (26) Lighting facilities. To provide for lighting the streets in the City and to make such lighting in whole or in part a general charge; to create, continue and from time to time change, alter, amend and abolish separate lighting districts and provide that special lighting facilities and equipment be therein provided, and to assess the cost of such special lighting upon the property in such district and provide for the collection and payment of such assessments; and to protect all lamps and other apparatus used in public lighting and to prohibit injury thereto and tampering or interference therewith.
- (27) Referendum. Except as otherwise provided by § 34.00 of the Local Finance Law, to submit to the qualified voters of the City, at any general or special election, for their approval or disapproval, any proposition concerning the exercise of any power herein given, or otherwise conferred by law, and to provide for the expense thereof.
- (28) Charitable and correctional institutions; public conveniences. To establish, maintain, continue, manage and administer hospitals and dispensaries, a City jail and such other charitable and correctional institutions deemed necessary; to relieve, assist, instruct and care for children and poor, sick, infirm, defective and insane persons; to provide for the burial of deceased indigent persons; to establish and maintain such institutions and instrumentalities for education, instruction, enlightenment, entertainment, recreation and welfare of its inhabitants as it may deem appropriate or necessary for the public interest; and to establish and maintain public drinking fountains, public comfort stations, urinals and other conveniences for the public.
- (29) Garbage, ashes, rubbish and refuse; collection and disposal. To provide for the collection, removal and disposal of garbage, ashes and rubbish and to fix and determine whether the same shall be a general charge or in whole or in part a local assessment against the people and property benefited, and if any part is made a local assessment to arrange and provide for such assessment and collection; to create, establish, alter and change special districts for such purposes and to provide for the assessment and collection of the cost within such districts; to provide for the collection of dead animals and other refuse in, upon or near public streets and highways; and to provide for the erection and operation of garbage crematories and other apparatus for the destruction of garbage, dead animals and other substances and to acquire sites therefor.

- (30) Course of Owasco River. To keep open and preserve the course of the Owasco River through said City; to prevent and punish encroachments upon or over the flowing waters thereof; to prevent the throwing into such river of any dead animal, earth or other material; and to regulate and provide for places of bathing in such river.
- (31) Animals and fowl. To establish and regulate public pounds and to restrain the running at large of animals and poultry in the streets, highways and public places.
- (32) Holidays, recreation and entertainment. To establish and proclaim local holidays and to appropriate funds for band concerts, public recreation, celebrations of holidays and other events and for the entertainment and expense of municipal conventions and conferences held in the City and of visiting delegations, officials and persons whom it is desired to honor.
- (33) Cemeteries. To regulate and control the establishment and continuance of cemeteries within the City and the burial of dead therein; to continue and discontinue existing cemeteries and establish new ones and provide for the management, administration, maintenance and upkeep thereof; to cause maps and plats to be prepared and arranged for the sale of lots; to provide and erect necessary buildings, vaults, fences and other equipment; and generally provide for such things as are needful or essential in connection therewith.
- (34) Soule Cemetery. To continue the Soule Cemetery and to provide for its management, control, maintenance and protection, including protection of the rights and property of individual lot owners; to make all necessary constructions and erections; to acquire additional land to be used in connection therewith; to limit, control and regulate the use of such cemetery, interments therein and the erection of structures, monuments, fences and markers; and generally to provide for the upkeep and repair of such cemetery and of the roads leading thereto from the City.
- (35) Fire protection. To prevent and extinguish fires and to protect the people and property of the City from fire and other casualty; to establish, continue, discontinue, alter and maintain a Fire Department and all needed houses, equipment and apparatus and to provide for the payment of the same; and to provide regulations for the discipline, organization, operation, equipment and compensation of such Fire Department.
- (36) Police Department. To establish, continue and maintain a Police Department; to regulate and control the number of employees therein; and to provide for its discipline, organization, equipment and compensation.
- (37) Fire alarm system. To establish, provide and maintain a fire alarm system and to prohibit false alarms and all interference and tampering with the fire alarm system and fire apparatus.
- (38) Traffic; littering. Subject to general laws of the state, to regulate the use of streets, sidewalks and public places by pedestrians, animals, and motor and other vehicles; to regulate and license the running and operation of engines, omnibuses, trucks, taxicabs, trolley cars, bicycles, motorcycles, motor vehicles, vehicles, airplanes, and other instrumentalities and devices for transportation and fix the rate of speed thereof; to regulate parades and public assemblages in streets and public places of the City; to regulate and prohibit the dropping of pamphlets, tracts and other matter from airplanes and other aerial machines within the City; to regulate and prevent the depositing of ashes, garbage, rubbish and filth upon the streets; and to regulate and prohibit coasting on the streets of the City.
- (39) Excavations, drains, laterals and pipes in streets. To regulate and license digging and excavating in streets and public places, whether by persons or corporations; to require persons and corporations having or controlling mains, pipes, water laterals, drains and sewer laterals in streets to keep the same in proper condition and repair; and to regulate and provide for the care and maintenance of drains, laterals and water pipes in streets.
- (40) Use of sidewalks and streets. To regulate the use of sidewalks and store, house and other building fronts; to regulate and prohibit the erection and construction of any stoop, steps, platform, bay window, stairs, cellar, area, areaway, descent to or ascent from any building, or any projection from any building in, to, over, upon or under any street or public place; to control, regulate and prohibit the building, use and occupancy of any cellar, underground areaway or excavation under the sidewalk or street or any part

thereof and to provide terms and conditions of any permitted use; and to control, prohibit and order removed any grating, manhole cover or other construction in the walks or streets.

- (41) Advertising. To regulate and control the erection and construction in, upon and near streets and other public places of billboards and other advertising media.
- (42) Licenses, banners, noises, etc. To license, regulate and restrict hawking, vending, peddling and the crying of goods, wares, merchandise or other commodities in the streets and public places and by going from house to house; to control and restrain the distributing and peddling of handbills, pamphlets, tracts and other like matter in the streets and by going from house to house; to license distributors of bills and other advertising matter; to regulate the use of the streets for lights, signs, awnings, horse troughs, posts, poles and wires; to regulate and control the hanging, exhibiting and swinging of banners, placards and flags in, upon and across streets and from one building to another; and to regulate and prohibit whistles, ringing of bells and noise.
- (43) Destructive matter on streets and sidewalks. To prohibit the placing, dropping and throwing of any glass, nails or other destructive matter in public streets and the leaving and permitting them, or any of them, to remain therein.
- (44) Traffic. To regulate traffic pursuant to Article 39 of the Vehicle and Traffic Law.
- (45) Oversize loads. To regulate, control and prohibit the moving of any house or structure upon or over any street or sidewalk pursuant to the Vehicle and Traffic Law.
- (46) Building and construction. To enforce the New York State Uniform Fire Prevention and Building Code and to enact more stringent requirements pursuant to Article 18 of the Executive Law.
- (47) Fire districts. To make, establish and fix, and from time to time alter and amend, fire districts.
- (48) Places of public assemblage. To enforce the provision of the New York State Uniform Fire Prevention and Building Code and to enact more stringent requirements pursuant to Article 18 of the Executive Law.
- (49) Dangerous construction, conditions and activities. To prevent dangerous construction and conditions of buildings, chimneys, fireplaces, stoves, boilers and other heating apparatus in any building; to regulate the deposit of ashes; to provide for the inspection of steam engines and boilers and to prohibit the use of unsafe ones; and, subject to general provisions of law, to provide for the licensing of steam engineers and persons managing and operating steam plants, engines and boilers.
- (50) Safety, health, comfort and welfare of inhabitants. To maintain order and enforce law, protect property and preserve and care for the safety, health, comfort and general welfare of the inhabitants of the City and for any of such purposes to regulate, license and control occupations, businesses and public exhibitions and the construction, use and occupancy of buildings used for dwellings, and other structures, and to adopt and promulgate general housing regulations.
- (51) Regulating enumerated pursuits. Subject to the Constitution and general laws of the state, to provide for licensing and otherwise regulating auctioneers, pawnbrokers, junk dealers, dealers in secondhand articles, hawkers, vendors, peddlers, public cartmen, truckmen, hackmen, cabmen, expressmen, taxicab drivers, drivers, bootblacks, porters, scavengers, sweepers, theaters, moving-picture houses, bowling alleys, shooting galleries, billiard parlors, skating rinks, halls or places for dancing, circuses, menageries, public exhibitions of any kind, places of amusement and shows.
- (52) Rates of fare of vehicles for hire. To regulate and prescribe the rates of fare to be taken or charged by owners and drivers of taxicabs.
- (53) Combustible materials; noxious businesses. To license, regulate and prohibit within the limits of the City the manufacture, sale, transportation, storage, preparation and use of gunpowder, dynamite, nitroglycerin and other explosives, kerosene, petroleum, gasoline, naphtha and other combustible and dangerous materials and to license, regulate and prohibit within the limits of the City slaughtering of animals, bone boiling, fat rendering and other noxious businesses.
- (54) Air pollution. To regulate and prohibit the emission of smoke, noxious gases, deposits or other pollution

from buildings, locomotives, engines and other sources and to regulate, restrict and prohibit the use of bituminous coal within the City or any portion thereof.

- (55) Public nuisances. To prevent, restrain, remove and abate public nuisances.
- (56) Private sewers, drains, sinks, vaults and privies. To regulate and prohibit the construction and use of private sewers, drains, sinks, vaults and privies and to compel the owner and occupant of any premises upon which is situated any objectionable stable, privy, sewer, drain, cistern, vault or any unwholesome or nauseous condition to cleanse, remove or abate the same.<sup>[1]</sup>
  - [1] *Editor's Note: Original § 26(57), Milk control, which immediately followed this subsection, was deleted as preempted by the state. See Art. 21 of the Agriculture and Markets Law.*
- (57) Sale of meat, poultry and fish. To regulate and control the sale of meats and to provide for the inspection thereof and to prohibit the sale of any diseased, tainted or bad meat, poultry or fish.<sup>[2]</sup>
  - [2] *Editor's Note: Regulation of the inspection and sale of meat and poultry has been preempted by the state. See Arts. 5-B and 5-D of the Agriculture and Markets Law.*
- (58) Discharge of weapons; explosives. To prohibit, restrain and regulate the discharge of firearms, fireworks, and the explosion of gunpowder and gun cotton.
- (59) Loitering. To prohibit persons collecting, loitering, standing upon and occupying sidewalks, bridges, hallways, passageways and stairways.
- (60) Preservation of order. To preserve the public peace and good order; to prevent fighting, threatening or challenging to fight, and quarreling; and to prevent riots, disturbances and disorderly conduct.
- (61) Disorderliness, gambling, drunkenness and vagrancy. To suppress and prohibit disorderly houses, houses of ill fame, gambling houses, gambling, and the use of any fraudulent or chance device of any kind; to prevent and prohibit drunkenness and disorderly conduct in streets and public places; and to restrain and punish vagrants, mendicants, street beggars, common prostitutes and disorderly persons.
- (62) Electric power.
  - (a) To furnish and supply the City of Auburn and the people thereof with a public utility service which shall include works, structures, poles, lines, wires, conduits, mains, systems, waterpower and any and all other real and personal property used or necessary for, connected with or appertaining to the furnishing of such service; to construct, lease, purchase, own, acquire, use and/or operate any public utility service within or without its territorial limits for the purpose of furnishing to itself or for compensation to its inhabitants any service similar to that furnished by any public utility company specified in Article 4 of the Public Service Law or as the same shall be amended from time to time; and to purchase gas or electrical energy from the state or from any state agency or other municipal corporation or from any private or public corporation.  
[Amended 9-9-1993 by L.L. No. 3-1993]
  - (b) To provide an initial public utility system consisting of the renovation of and construction of improvements to the Mill Street Dam and the power station property on the Owasco Outlet in order to produce economical electrical energy for municipal use. The cost thereof is estimated to be \$605,000 and the maximum cost thereof will not exceed \$650,000.  
[Amended 9-9-1993 by L.L. No. 3-1993]
  - (c) To undertake future public utility system projects from time to time in accordance with Subsection **A(62)(a)** hereof for the City and its inhabitants, to include the construction of additional hydropower and landfill/natural gas service systems, as well as other potential public utility systems, and to expend a maximum amount not to exceed \$15,000,000 for each public utility project and that any bond issued for each public utility project may not exceed the maximum amount of \$10,000,000.  
[Amended 9-9-1993 by L.L. No. 3-1993; 7-10-2009 by L.L. No. 1-2009]
  - (d) To enter into all contracts necessary to accomplish the purposes of Subsection **A(62)(a)** through **(c)** hereof.

- (e) The powers designated in this Subsection **A(62)** shall be exercised pursuant to the provisions and subject of the limitations of Article 14-A of the General Municipal Law of the State of New York and as the same shall be amended from time to time.

(63) Ordinances for government of City; exercise of its powers. To take all measures, do all acts and enact any ordinances not inconsistent with the laws of the state as shall be deemed expedient or desirable for the good government of the City, its management and business, protection of its property, the safety and health of its inhabitants, the protection of their property, preservation of peace and order, suppression of vice, the benefit of trade, the preservation and protection of the public streets, preservation of public health, the prevention and extinguishment of fires, and the exercise generally of the powers of the City.

## § C-26. Ordinances and local laws; penalties and enforcement.

The Council may make, continue, modify and adopt all local laws and ordinances necessary to carry into full effect any and all powers conferred upon the said City or said Council. It may provide for the enforcement of local laws and ordinances by legal or equitable proceedings, prescribe in its discretion that a violation thereof shall constitute a misdemeanor or violation pursuant to the Penal Law of the State of New York, and provide for the punishment of such violations by civil penalty, fine, forfeiture or imprisonment, or by two or more such punishments.

## § C-27. Publication of ordinances.

- A. Every ordinance or regulation imposing a fine or imprisonment or both such fine and imprisonment shall take effect upon publication of a notice as hereinafter provided or a later date specified in such ordinance or regulation. The notice shall contain the title and a brief description with a statement that such ordinance or regulation is on record with the City Clerk, which notice shall be published at least once in the official newspaper of the City or, if there is no official newspaper, then in a daily newspaper published in the City. It shall not be necessary to publish any ordinance or regulation to be enforced within the City except as herein provided.
- B. In case of insurrection, riot, conflagration or other necessity requiring immediate operation of such ordinance or regulation, it shall take effect as soon as proclamation thereof by the Mayor and after such proclamation has been posted in five conspicuous places in the City of Auburn.

## § C-28. Oaths, affidavits, acknowledgments and subpoenas.

The Mayor, the Councilmen (Councilors), City Manager, City Clerk, and each deputy of the City Clerk shall have the power to administer oaths and take affidavits and acknowledgments within the City, the same as Commissioners of Deeds. They shall also have power to administer any oaths or take any affidavit in respect to any hearing, trial or matter pending before them, or any of them, and to issue subpoenas and compel the attendance of witnesses and the production of papers and documents. Any false testimony upon any such hearing, or inquiry, is hereby declared to be perjury and may be punished as provided by law for that crime.

## § C-29. Council to prescribe notices.

Whenever any notice is required by this Charter or by law to be given and details of such notice are not prescribed, the Council may, by ordinance, prescribe for the giving of such notice, either by personal service, mail or publication, and the length of time thereof.

## § C-30. Public hearing on local improvements.

Before determining to make any improvement, the cost of which shall be, in whole or in part, a local improvement charge, or a charge against the abutting property, a public hearing thereon shall be given by the Council when

practicable, upon such notice as it may prescribe. But this shall not apply to directions or orders to individual owners or occupants of premises to remedy or repair defective or dangerous conditions in walks or highways in front of such premises, or to lay, relay or otherwise improve sidewalks, curbs and gutters, or to any work or expenditure by the City in cleaning or repairing sidewalks or otherwise remedying dangerous conditions which are in violation of ordinances.

## **§ C-31. Public works improvements; award of contract.**

The Council may prescribe that any improvement or public work which it determines upon may be done by contract or by the City under the direction of the City Manager. If ordered done by contract, the City Manager shall prepare uniform terms and conditions for proposals, fix the security to be given, and advertise for proposals. Upon receiving such proposals, he or she shall, at the time fixed, open and tabulate them and report the result to the Council, with such recommendations he or she may have to make. Any or all of such proposals may be rejected by the Council. If a satisfactory proposal is received, the Council may award a contract for the improvement or work and direct the execution of such contract on behalf of the City. Every contract so made shall provide that the improvement or work shall be in substantial accord with plans and specifications previously adopted by the Council for such work, so far as may be.

## **Article III. Finance and Budgets**

### **§ C-32. Accounts of financial activities.**

In accordance with ordinances of the Council and general provisions of law, accurate and concise records shall be kept of all moneys, funds, and property received by the City and the disbursement thereof; of the funded debt, its maturities, and various purposes and accounts for which issued; of all funds and accounts for which money is raised by taxation or special assessment; and, generally, of all financial activities of the City, all of which shall conform so far as practicable to approved municipal accounting systems. The City Manager shall prescribe rules and regulations covering and controlling such systems of records and accounting.

### **§ C-33. Claims against City; examination and audit.**

The Council shall prescribe and establish a system of examination and audit of all claims against the City arising out of contract, express or implied; no such claim against the City, except for a fixed salary, compensation of officers or employees in any department, or for principal or interest on bonded debt, shall be paid unless a claim therefor shall have been prepared and audited, or approved by the Council. No costs shall be allowed in any judgment recovered against the City on a claim arising out of contract, express or implied, unless such claim shall first have been presented to the Council, or for audit, at least 30 days before the commencement of an action.

### **§ C-34. Fiscal year.**

The City's fiscal year shall begin on the first day of July in each year.

### **§ C-35. Annual budget.**

- A. Annual estimate of revenue and expenditure. On or before the first day of May in each year, all heads of departments and officers shall furnish to the City Manager estimates in writing of the probable amount of revenue and expenditures in their respective departments or offices for the next fiscal year.
- B. Preparation of budget.
  - (1) On or before the first day in June in each year, the City Manager shall prepare an estimate or proposed budget for the City of such fiscal year, which estimate, or proposed budget, shall show, so far as

ascertainable:

- (a) The probable revenue to the City from all sources;
  - (b) The amount needed for conducting the business and affairs of the City in its various departments and offices; for the various purposes contemplated either by this Charter or by other provisions of law in relation to cities, including a sum for contingent expenses; and for the payment of the principal and interest of all bonded indebtedness of the City falling due during the year;
  - (c) The amount deemed necessary to be raised by tax;
  - (d) The amount estimated to provide a reserve for all uncollected City real property taxes, such amount to be not less than the principal amount of City real property taxes as levied by the Council for the last completed fiscal year and remaining uncollected at the end of such year, including the amount of such City taxes on real property sold to the City for such City taxes but not redeemed at the end of such last completed fiscal year.
- (2) After he or she has made such estimate, he or she shall submit it in writing with such reasons for it in detail as he or she may have to give the Council, which shall order a public hearing thereon.
- C. Public hearing; modification; adoption. After publication of notice of such hearing, the Council shall, at the time appointed, hear any taxpayer who wishes to be heard in reference thereto, and, after such hearing, it may adopt such estimate as is submitted to it or increase, diminish, reject or otherwise modify or amend the same, except as to that part relating to the City debt, and adopt the estimate as so modified or amended. When it shall have adopted such estimate, as presented or amended, the same shall be entered at large in its minutes and published in its proceedings, and the several sums in such final estimate so adopted shall be and become appropriated for the several departments, offices, purpose and indebtedness named in the estimate for the ensuing fiscal year and may be disbursed by the heads of the several departments, subject to the approval of the City Manager when so required. Such estimate shall be known as the "City tax" budget.
- D. Levy; payment date of City tax. The several amounts therein named shall be levied, assessed, and extended upon the assessment rolls for the year and raised by tax upon the real and personal property liable to taxation in the City, according to the valuations thereof as fixed in such rolls, at the time and in the manner herein provided or permitted. Such amount, or tax, when so levied, assessed and extended, shall be known as "City tax" and shall be due and payable on the first day of July in each year.<sup>[1]</sup>
- [1] *Editor's Note: Original §§ 37 and 38, which immediately followed this subsection and provided for the collection of a school tax, were repealed by L. 1953, c. 878.*

## § C-36. County and state tax.

- A. County Legislature to determine tax; delivery of resolution. The County Legislature of the County of Cayuga shall in each year equalize the amount of the City assessment rolls, as certified by the City Clerk to its Chairman or Clerk, as herein provided, with those of other towns of the county, as required by law, and shall by resolution adopted on or before the 15th day of December in each year ascertain and direct the amount of tax to be levied, assessed and raised in the City of Auburn for state, county and other lawful purposes within the control of the County Legislature and shall cause a duplicate copy of such resolution to be certified by its Chairman and Clerk, under the Seal of the county, and to be delivered to the City Clerk not later than the 15th day of December in each year.
- B. Levy by Council. The City Clerk shall present the same to the Council at its next meeting. The Council shall thereupon direct that the amount required by such resolution be levied and extended on the assessment rolls for that year by the Clerk, as herein provided. Such amount shall be known as the "county and state tax" budget for the City and shall be levied, assessed, extended on the assessment rolls for the year and raised by tax upon the real and personal property liable to taxation in the City according to the valuations thereof as fixed in said rolls, at the time and in the manner herein provided.
- C. Payment date. Such amount, or tax, when so levied, assessed and extended, shall be known as the "county and state tax" and shall be due and payable on the first day of March in each year.

## § C-37. Transfers to other funds.

The Council may by ordinance provide and permit moneys, except water moneys, funds and accounts, to be transferred from one fund or account to another. No fund, account or appropriation as fixed by the City tax budget shall be overdrawn.<sup>[1]</sup>

[1] *Editor's Note: Original § 41, which immediately followed this section and provided for the advance of funds to the Board of Education, was repealed by L. 1953, c. 878.*

## § C-38. Budget surplus.

In case there is a surplus in the aggregate of revenue estimated in the City budget, such surplus shall be included with estimated revenues in the next budget, if ascertainable at the time such budget is prepared.

## § C-39. Sale of City real estate and franchises.

[Added 5-4-1989 by L.L. No. 1-1989]

The City Council may, by resolution adopted by four affirmative votes, sell, convey, exchange, grant or release any City real estate or any franchise belonging to or under the control of the City, apply such real property for a period not to exceed 40 years at public or private sale, and grant rights or interests in, over, under and across any real property in which the City has any right, title or interest, for such consideration and upon such terms and conditions as the City Council may deem proper.

## Article IV. Taxes and Assessments

### § C-40. Assessor; Board of Review.

- A. "Assessor," as used in this Charter, shall mean the person appointed pursuant to the Real Property Tax Law, charged with the duty of assessing real property in the City of Auburn and to perform and discharge the usual duties and functions of an Assessor under the Real Property Tax Law.
- B. Conformity with state law. Except as otherwise provided in this Charter, the assessment of real property in the City of Auburn shall conform to the Real Property Tax Law.
- C. Board of Assessment Review. There shall be a Board of Assessment Review consisting of five members who shall be appointed and shall have all the powers and duties prescribed by the Real Property Tax Law.

### § C-41. Form and content of assessment rolls.

The rolls upon which such assessments are made, herein called and known as "assessment rolls," shall be prepared so as to conform so far as practicable to the Real Property Tax Law and shall be in such form and with such columns as the Council may direct.

### § C-42. Levy and extension of taxes.

- A. City tax. As soon as practicable after the adoption of the annual City budget, the City Clerk shall forthwith proceed to extend and apportion the amount to be raised by local taxation on the assessment roll upon all real property on such roll liable to taxation in the City, according to the valuations thereof on such roll. Such tax when completed and extended shall be the "City tax."
- B. County and state tax. Upon receiving from the County Legislature the amount to be raised for county, state and other purposes and known as the "county and state tax" budget, the City Clerk, when directed by the Council,



shall forthwith proceed to extend and apportion the same upon such assessment roll for the year upon all real and personal property liable to taxation, according to the valuation thereof on such roll. Such tax when so completed and extended shall be the "county and state tax." The annual cost and expense of such extension and apportionment, fixed on the basis of the ratio of apportionment of the state and county tax between the City and the towns, shall be a county charge, payable by the county to the City.

- C. Authority of Council. The Council may at any time prescribe that the City tax and county and state tax budgets shall all be apportioned and extended upon the same roll, or the same copy of such roll, or upon separate copies of such roll, and may direct and prescribe how and in what manner the same shall be done and when completed.

### **§ C-43. Warrant and delivery to City Treasurer.**

When the City Clerk shall have apportioned and extended any tax on such assessment roll as directed and completed the same, he or she shall forthwith present the same to the City Manager, and, when approved by the City Manager, a warrant shall be annexed thereto signed by the City Manager and the City Clerk in substance commanding the City Treasurer, or such officer as may be designated, to receive, levy and collect the several sums in said assessment rolls specified as assessed and taxed against the persons or property therein described and named. The completed roll containing the City tax, apportioned and extended as aforesaid, shall be delivered to the City Treasurer on or before the 20th day of June in each year. The completed roll containing the county and state tax, so apportioned and extended, shall be delivered to the City Treasurer on or before the 20th day of January in each year. The term "City Treasurer," as used herein, shall mean and apply to the officer performing the usual duties and functions of City Treasurer, by whatever name he or she may be known.

### **§ C-44. Lien of taxes and assessments; enforcement.**

- A. The said City tax and county and state tax shall, from the time a warrant for the collection of each, respectively, is delivered to the City Treasurer, be and become a lien upon the lands upon which the same, and each of said tax, is assessed and taxed. Each installment of an assessment for a local improvement shall likewise become a lien upon the lands upon which the assessment is made from the time when such installment becomes due and payable. The lien of any such tax upon any real property shall be superior to all other liens and encumbrances thereon.
- B. If any such tax is not paid within three months after it is due, it may be enforced and collected by action against the person against whom assessed or the lien thereof foreclosed the same as in a mortgage foreclosure case. Any such action or proceeding shall be instituted in the name of the City of Auburn.

### **§ C-45. Liens for improvements or work; addition to City tax.**

Every amount which may be directed by the Council to be paid by any property owner for any improvement, benefit or work done to or for his property, or to preserve the City from liability, and which is not represented by a local improvement assessment shall be a lien upon such property from the time when the amount thereon is determined by the Council and ordered paid. If such amount is not paid when the next City tax becomes payable, it shall be added to such tax against such property.

### **§ C-46. Presumption of regularity of warrant or resolution.**

Any warrant delivered for the collection of a tax or local assessment, or any resolution determining the cost of any improvement, benefit, removal or remedying of a dangerous condition, shall be presumptive evidence in all actions and proceedings that all the previous proceedings, including the assessing, extending and levying of the tax, notice of the improvement and of the determination of the amount thereof, were regular and according to law.

### **§ C-47. Irregularities not to invalidate assessment.**

No error or mistake in the name of the owner of any lands assessed upon any general tax roll, or upon any roll for a local improvement, or the fact that the name appearing upon such roll as the owner of any lands is not the owner thereof, nor any irregularity in advertising or certifying any resolution or notice, nor any omission of any officer, agent or contractor to carry out any detail of any resolution, provision of ordinance or of contract, shall invalidate such assessment, or such assessment roll, excepting only where fraud is shown.

## **§ C-48. Correction of errors.**

At any time after the completion of any assessment or tax roll, whether the same is for a general tax or local improvement, the Council may direct the correction of any error made in any name, or in copying, or in levying or extending any tax; provided, however, that five days' previous notice thereof shall be given to the party or person interested or affected.

## **§ C-49. Correction of illegal assessments.**

At any time the Council may order and cause to be stricken from any assessment roll any property which is illegally assessed and wrongfully thereon, or the assessment of which is for any reason illegal and wrongful, and may cancel and annul any tax extended and apportioned thereon and may order repayment of any such tax which has been paid. In case any tax or assessment of any kind shall be void, or fail for want of jurisdiction, or because of any omission or irregularity in any respect in the levying or assessment thereof, or in the sale or proceedings taken for the sale of real estate upon which it was assessed, the Council shall have power, and it shall be its duty, to cause the reassessment of such property, or of the proper amount of such tax or assessment thereon, or may order the Assessor to reassess the cost of a local improvement thereon, or may direct a resale of such property. Any such reassessment shall for all the purposes of this Charter be deemed and taken to be an original assessment, and such resale an original sale.

## **§ C-50. Omitted property.**

The Council of the City shall have power to prescribe by ordinance for the assessment of any property which has been omitted from any assessment roll and to order and direct that a just and equitable amount be assessed, levied and extended against such property for the periods for which taxes or improvements are so omitted and to order and direct that such amount so ordered assessed be added to the next City tax against such property. The fact that title to such property has changed since such omission occurred shall not prevent the Council from making such a just and equitable assessment to cover such omission.

## **§ C-51. Due dates; interest charges and penalties.**

[Amended 5-27-1993 by L.L. No. 1-1993]

Every tax levied, assessed or extended upon any roll shall become delinquent if not paid within one month after the same becomes due and payable, and thereafter there shall be added to such tax 1% per month or part thereof, to be collected by the City Treasurer at the time such tax is paid. Such interest charges shall belong to the City.

## **§ C-52. Publication of notice of collection; advance statement.**

Upon receiving the tax or assessment rolls for the City, county and state taxes, or any of them, the City Treasurer shall cause a notice to be published in reference to the collection thereof in a daily paper published in the City of Auburn twice a week for four weeks, beginning respectively as follows: City tax beginning the first week in July; county and state taxes beginning the first week in March. Such notice shall be to the effect that he (or she) has received rolls for such taxes and such taxes shall be collected as follows: City taxes shall be payable in installments of 1/2 during the month of July, the second half during the month of January, and county and state taxes shall be paid during the month of March; that the City Treasurer will, during such periods, receive payment of such taxes without percentage, and that thereafter 1% per month will be charged and collected for each delinquent installment of the

City and county and state taxes. Such notice, when so published, shall be deemed a personal demand upon each and every person upon such roll for the payment of the tax assessed against him or her. In addition, the City Treasurer shall mail to each owner whose name appears upon any tax or assessment roll a statement pursuant to Real Property Tax Law § 922.

## § C-53. Record of payments; receipts.

- A. Upon receiving payment of any tax or rent, the City Treasurer shall enter, in a column on the assessment roll, opposite the description of the property, the fact of payment and the amount and date thereof, or, with the approval of the Council, the City Treasurer may install a tax and rent card system for the recording of payment of taxes and rents. Such card system shall contain at least one card for each parcel subject to taxes or rents and shall contain a description of each parcel of property in the same manner as required on the assessment rolls of the City. On each card the amount of taxes levied or charges made shall be entered and the fact of payment, the amount of payment and the date of payment shall be recorded thereon. In the event of the installation of a card recording system, the entries thereon shall constitute a record of the payment of taxes or rents, and thereafter no entries relating to the payment of taxes or rents shall be required on the assessment rolls.
- B. Upon the payment of taxes or rents, the City Treasurer shall give the person paying such tax or rent a receipt as provided by § 986 of the Real Property Tax Law.

## § C-54. Advance payment of tax or assessment.

The City Treasurer is authorized to receive payment of any tax or assessment for local improvement in advance of the time when the same becomes due and payable as herein provided and to give a proper receipt therefor, provided the amount of such tax or assessment is ascertainable.

## § C-55. Power of Council to extend collection periods or change due dates.

The Council shall have the power to extend the time for the collection of any tax or assessment for local improvement, for such period as it may deem advisable, and to postpone or regulate the time for the collection of penalties or additions for delinquent taxes. It may also postpone and change the date when either the City tax or county and state tax shall become due and payable if in its judgment such postponement is desirable or warranted by reason of any unusual delays in the preparation of assessment rolls or budgets, extension of taxes or the giving of any notices to property owners directed by the Council.<sup>[1]</sup>

[1] *Editor's Note: Original § 58, which immediately followed this section and provided for the deposit of school taxes, was deleted as obsolete. See L. 1953, c. 878.*

## § C-56. Payment of county and state taxes by City Treasurer.

[Amended 5-27-1993 by L.L. No. 1-1993]

On the first day of April of each year, the City Treasurer shall pay over to the County Treasurer the amount of the collected county and state tax. Thereafter, the City, unless otherwise directed by the Council, shall be indebted to the county for the amount of the uncollected county and state tax, and said tax, together with the lien thereof, and all additions and penalties, shall be and become the property of the City. Payment over of the indebtedness presented by the uncollected state and county tax shall be made by the City to the county on the 10th day of each month as said tax is actually collected through payment thereof or enforcement of the collection thereof by tax sale and the foreclosure of the tax lien either by procedure under this Charter or pursuant to the Real Property Tax Law, such payment in any event to be completed not later than October 31 of the next succeeding year after the levy of the tax, pursuant to Subsection C of § C-42 of the Charter.

## § C-57. Uncollectible county and state taxes.

If any tax or assessment appearing upon the county and state tax roll, the money for which tax the City has paid or credited to the County Treasurer, is for any reason uncollectible, because of error, illegality or other cause, a record of the amount of such uncollectible taxes or assessments so paid or credited by the City shall be kept by the City Treasurer and reported each year to the Council. The Council may direct that such amount of uncollectible tax be added to the amount of the next county and state tax budget, when reported to it, and be levied, extended and collected with such budget amount. When collected such amount shall be credited to the City.

## § C-58. City Treasurer to prepare statement of unpaid taxes.

On May 1 of each year, the City Treasurer shall prepare a statement of all taxes outstanding and unpaid on the City and county and state tax rolls and combine and assemble the same to show the total outstanding against each piece of property; thereafter such statement shall be known as the "total tax" unpaid. Upon payment of any tax in such statement, and before advertisement of sale, as herein provided, the same additions shall be charged for penalties as if each such tax were separate.

## § C-59. Special warrant for unpaid taxes and assessment.

Upon completion of such total tax statement, the City Treasurer shall file it with the City Manager, who shall report the same to the Council with his (or her) recommendations. The Council may thereupon by ordinance direct that constables of the City be employed to make such collections and may authorize the City Manager to issue a special warrant to each such constable he or she may designate commanding such constable to levy the amount of any unpaid tax or assessment named in said warrant, and 5% thereon for his or her fees, by distress and sale of the goods and chattels of the person upon whose real or personal property such unpaid tax or assessment is levied, or of any goods or chattels in his or her possession, wherever the same may be found in said City, and further directing that such officer pay the same over to the City Treasurer forthwith, and to make return of such warrant not later than the date therein stated. Such ordinance shall provide that such constable shall give at least five days' public notice previous to the sale, by notice to be posted in at least three public places in said City, and that no claim of property made to such goods and chattels so found in the possession of such person shall be available to prevent a sale, and may contain such other provisions in reference to such collections and sale and the enforcement of the collection for such unpaid taxes or assessment as the Council may direct.

## § C-60. Sale of property for unpaid taxes.

[Amended 5-27-1993 by L.L. No. 1-1993; 7-7-1994 by L.L. No. 2-1994]

- A. On or about the first day of June in each year the City Treasurer shall cause to be published at least once a week for two weeks in a newspaper published in the City of Auburn a notice of sale of real property for unpaid taxes, specifying a day (no earlier than five days after the second notice is published) and the time at which the sale will commence and the location of such sale. Such notice shall contain a list of the real property to be sold giving a brief description of each parcel by street, tax map or other map number, or other appropriate designation, the name of the owner or occupant as the same appears on the tax roll and the aggregate amount due on each parcel as of the time of sale, such amount to include the unpaid taxes for the year advertised, including all interest (at the rate and for the periods set forth in § C-51 above), penalties and all other expenses chargeable against the parcel (including but not limited to such parcel's share of the expense of publication and notice). The notice shall state that if the aggregate amount stated in the notice is not paid prior to the date and time set forth in the notice for the sale, the City Treasurer shall sell the real property on which or in respect to which such taxes have been imposed or levied at the sale in accordance with this Article **IV** to pay such taxes, interest, penalties and charges. No error with respect to a parcel in any list shall render the sale void or in any manner affect the validity thereof except as to the effect, if any, on the particular parcel in respect to which such error occurred.
- B. Proof of the publication of the notice shall be filed in the office of the City Treasurer.
- C. The City Treasurer shall also, prior to the commencement of publication required by Subsection **A** of this section, cause notice of such tax sale to be sent by first class mail to the name and address of the owner or

occupant, as shown on the tax roll, of each parcel to be sold. Such notice shall contain a brief description of such parcel, the aggregate amount due on such parcel at the time of sale, and a statement that unless such amount is paid prior to the commencement of the tax sale proceedings the real property will be sold. The expense of mailing such notice shall be an additional expense chargeable against the parcel.

- D. On the day and at the hour specified in such notice, the City Treasurer, or such other person as may be directed by the City Manager as provided below, shall commence such sale and continue the same from day to day until all such real property shall be sold. If in case of sickness, absence, inability or other cause the City Treasurer is unable to conduct such sale, the City Manager may name some other officer to conduct such sale by filing in the office of the City Clerk a written designation. Such person shall have the same powers as herein given to the City Treasurer in reference to such sale. The City Treasurer may in his/her discretion decline to receive a bid on any parcel if in his/her opinion the bid is made by or for any person not acting in good faith. In such event, the parcel may be sold the same as if such bid had not been made. The factors which the City Treasurer may consider in determining whether a person is acting in good faith include, but are not limited to, the history of such person or any affiliate of such person of timely paying taxes and maintaining its property in good condition and repair.
- E. The purchaser of each parcel, immediately upon the conclusion of the sale of such real property, shall pay the amount of such sale to the City Treasurer. Upon payment of such amount, the City Treasurer shall furnish the purchaser with a written certificate describing the real property purchased and the amount paid thereon and dating the certificate as of the date of the sale; provided, however, if payment shall be made by check, the certificate shall not be delivered to the purchaser until payment on such check is received by the City, but the certificate shall, when delivered, be dated as of the date of the sale. Such certificate shall also contain a statement to the effect that if the real property described thereon is not redeemed, the purchaser may complete the purchase and take a conveyance of the real property. Such certificate shall also state that if a conveyance is not taken within five years of the date of the certificate, the certificate shall become void and no claim may thereafter be made on such certificate, unless such certificate was originally purchased by and still held by the state, the County of Cayuga or the City of Auburn.
- F. If a purchaser fails to pay the amount of the bid as required under Subsection **E** above, the City Treasurer may set aside the sale to such purchaser and all rights of the purchaser thereunder shall be extinguished. A certificate of sale may thereafter be issued to any person paying the amount of such bid. If after the expiration of 30 days no one has paid such amount, the City of Auburn shall become the purchaser, the same as if the City had been the successful bidder for the entire parcel at the sale. Notwithstanding the setting aside of such sale or the issuance of a certificate to the City, such bidder shall remain liable to the City for the amount bid, plus interest thereon at the rate of 10% per year computed from the date of the bid.
- G. Each such certificate shall be conclusive evidence that the sale and all proceedings prior thereto were regular and according to the provisions of this Charter and all laws in any manner relating thereto.
- H. Each such certificate shall be executed in the same manner as a deed, acknowledged or proved before any officer by law authorized to take the proof and acknowledgment of a deed.

## § C-61. Surplus moneys; payment into Court.

[Amended 5-27-1993 by L.L. No. 1-1993; 7-7-1994 by L.L. No. 2-1994]

In case such property shall be sold for an amount in excess of the unpaid taxes, interest, penalties, additions and expenses, the surplus shall be paid by the City Treasurer into the County Court of Cayuga County by delivering the same to the Clerk thereof, accompanied by a statement of the facts connected therewith, and such Court shall ascertain and determine, upon application made to it for that purpose by any person interested, who is entitled to such money and shall make such order and decree of distribution and payment as may be just and proper.

## § C-62. Purchase by City.

[Amended 5-27-1993 by L.L. No. 1-1993; 7-7-1994 by L.L. No. 2-1994]

- A. If upon such sale, with respect to any parcel of real property, no bid shall be made, or if the highest bid shall be

less than the aggregate amount stated in the notice of sale, the City Treasurer may declare the same sold to the City of Auburn for the aggregate amount stated in the notice of sale for such real property, and the City Treasurer shall issue the City a certificate of sale describing the property and stating the amount set forth in the notice of sale. The City Treasurer may subsequently issue and deliver a certificate of sale to any person who shall pay the amount chargeable thereon. Within 40 days after the last day of the sale conducted under § C-60, the City Treasurer shall report to the Council the total amount and the accounting of such real property sold to the City.

- B. In the event the City shall be the purchaser at the sale, or by declaration, the City shall, for all purposes of this Article **IV**, be deemed the purchaser, and, except as otherwise specifically stated herein, such purchases by the City shall be subject to the same right of redemption as purchases by any other person. If a parcel sold to the City is not redeemed, the deed therefor shall have the same effect and become absolute in the same time and upon the same conditions as in the case of a conveyance to any other person.
- C. The City Treasurer shall reject all bids made on any parcel of real property in which the City has an interest and shall bid on such parcels for the City for the amount stated in the notice of sale.
- D. Notwithstanding any other provision, the Council may, by resolution, authorize and direct the City Treasurer to purchase real property at the tax sale, without competitive bidding, for the aggregate amount stated in the notice of sale.
- E. Installment payments of delinquent taxes.
  - (1) When delinquent taxes may be paid in installments.
    - (a) When any taxes, including any assessments for local improvements, upon any real property in the City of Auburn shall have remained delinquent and unpaid and such real property has been sold for such unpaid taxes or assessments and a certificate or certificates have been taken therefor by the City of Auburn and such certificate or certificates has (have) not been assigned or sold by the City of Auburn, the City Treasurer may, but shall not be obligated to, permit payment of such delinquent taxes and assessments and the fees, interest charges, penalties and other charges thereon in such monthly installments as may be necessary to ensure full payment thereof within a period not to exceed the total number of months for which there are such delinquent and unpaid taxes and assessments, or 48 months, whichever is shorter. No property shall be eligible for the method of payment of delinquent taxes and assessments authorized under this Subsection **E(1)(a)** unless it shall be improved by a one-, two- or three-family residential (or residential/mixed-use) dwelling and the owner of the property shall be and, during the term of the agreement, shall continue to be domiciled in such dwelling. The City Treasurer in his sole discretion shall determine whether an owner is domiciled or continues to be domiciled in such a dwelling and whether a domicile has been created or acquired artificially or in bad faith.
    - (b) When any taxes, including any assessments for local improvements, shall remain delinquent and unpaid upon any real property in the City of Auburn, which real property does not meet the requirements of Subsection **E(1)(a)** above (i.e., such real property is commercial, industrial, four-or-more-family residential, the owner is not domiciled therein, etc.) and a certificate or certificates has or have been taken therefor by the City of Auburn and such certificate or certificates has or have not been assigned or sold by the City of Auburn, the City Manager may, but shall not be obligated to, permit payment of such delinquent taxes, assessments, fees, interest charges, penalties and other charges in such monthly installments as may be necessary to ensure full payment thereof within a period not to exceed the total number of months for which there are such delinquent and unpaid taxes and assessments, or 48 months, whichever is shorter.
  - (2) Agreement and installment payments.
    - (a) No person shall be entitled or permitted to pay such delinquent taxes and assessments in installments as provided in Subsection **E(1)** above until he shall first have applied for and executed an agreement in writing with the City Treasurer or City Manager, as the case may be, upon a form to be furnished by the City Treasurer (or City Manager), which form shall be approved by the office of the Corporation Counsel for the City of Auburn, wherein the applicant shall agree to:

- [1] Pay all taxes and assessments and unpaid interest, penalties and other charges upon such real property which are delinquent and unpaid as of the date of such agreement, together with interest on all such amounts at the rate of 10% per year from the date of such agreement;
    - [2] Make such monthly payments regularly in the amounts and at the times therein provided;
    - [3] Pay, on all real property within the City of Auburn owned by such applicant, all installments on current taxes and assessments and any fees and penalties thereon promptly as they respectively become due and payable and in any event prior to any sale thereof; and
    - [4] Comply with the domicile requirements [if the agreement is being entered into under Subsection **E(1)(a)** above] and other requirements of this section and any other requirements of the City Treasurer or City Manager, as the case may be.
  - (b) The City Treasurer (and City Manager, as the case may be) is authorized to provide in such agreement that so long as the provisions of § C-52E and the agreement are fully and timely complied with, the City and its officers will not take a tax deed for or bring any action to foreclose the lien of the taxes or assessments on such real property which are delinquent and are covered by the agreement during the period covered by such agreement; provided, however, that nothing herein shall prohibit the City Treasurer from proceeding with the procedures set forth in §§ C-61, C-62, C-63, C-64, C-65, C-66 and C-67 of this Charter, or enforce any judgments obtained against such person in any action brought by the City to recover such delinquent taxes. Any agreement entered into by the City Manager pursuant to the above authority shall provide that the payments made thereunder shall be made to the City Treasurer, and a copy of such agreement shall be furnished to the City Treasurer.
- (3) Application of installment payments. The City Treasurer shall enter in a special account the amounts of payments made under each such agreement, to the credit of the respective taxpayers. Each such payment shall be applied first to the interest at the rate provided in the agreement, and the balance shall be then applied to the items of interest, penalties, charges, taxes and assessments, in that order, and such amount shall be applied to the year of the oldest delinquency. To the extent that the amount of such payments entered in such account is sufficient to pay, in full, the interest, penalties, charges, taxes and assessments for a given year, the City Treasurer shall so apply such payments and issue to the taxpayer a satisfaction and discharge therefor.
  - (4) Taxpayer's default.
    - (a) In the event of a failure to comply with the agreement or with the terms of this Subsection **E**, such agreement shall, without further notice, terminate and be void and of no effect, and in such event the City Treasurer shall retain the sums, if any, which have been paid under the agreement and the same shall be applied to the items of unpaid taxes, assessments, interest, fees, penalties, and charges as provided above.
    - (b) No such installment payment or payments, and no discharge as to any portion of taxes and assessments to which such payments have been applied, shall prejudice or prevent the City or its officers in any way, in case of default under the agreement, from taking tax deeds or instituting foreclosure proceedings or resuming tax collection procedures without further notice, as though no such agreement had been made, or from enforcing any terms or conditions of the agreement or from commencing an action for breach of the agreement.
  - (5) Installment payment with Council approval. Notwithstanding anything provided to the contrary in this Subsection **E**, in the event the City Treasurer has refused to enter into an agreement, under the authority granted in Subsection **E(1)(a)** above, with the owner of property which meets the requirements of Subsection **E(1)(a)** or the City Manager has refused to enter an agreement under the authority granted in Subsection **E(1)(b)**, then in either such event the owner of such property may make a written request for the Council to authorize the City of Auburn to enter into an agreement with said property owner for the installment payment of tax arrears. After the receipt of such written request, the Council may, but shall not be obligated to, enter an agreement with the property owner for installment payments for the delinquent taxes, which agreement, if authorized by the Council, shall contain such terms and conditions as may be satisfactory to the Council.

- (6) Notwithstanding anything to the contrary provided herein, no property shall be eligible for any of the installment methods of payment authorized by this Subsection **E** unless the City is then the owner of the certificate of sale for the year(s) for which the payment of taxes is delinquent.

## § C-63. Redemption.

[Amended 5-27-1993 by L.L. No. 1-1993; 7-7-1994 by L.L. No. 2-1994]

The owner, or any person interested in any real property sold for taxes, may redeem such property at any time before the issuance of a deed to such purchaser by paying to the City Treasurer, for the use of such purchaser or those claiming under him, or the City, as the case may be, the sum equal to:

- A. The sum for which the property was sold, together with interest thereon at the rate of 10% per year computed from the date of such certificate; and
- B. Provided the City Treasurer has been notified, in writing, of such amounts prior to the redemption, the amount of any tax, special ad valorem levy or special assessment, including penalties and interest thereon prescribed by law, on such real property which the purchaser has paid after the sale and prior to the date of redemption, plus such amounts as may have been paid by the purchaser to redeem such property from prior or subsequent tax sales, plus the amounts referred to in § C-65 below, with interest on all such amounts referred to in this Subsection **B** at the rate of 10% per year from the date of payment thereof.

## § C-64. Redemption by lienholder or purchaser at prior tax sale.

[Amended 5-27-1993 by L.L. No. 1-1993; 7-7-1994 by L.L. No. 2-1994]

If such real property is redeemed, or the amount of such unpaid taxes, penalties, interest and other charges is paid at any time after sale, by the holder of any lien or purchaser at any prior tax sale, then such amount so paid may be added to the lien of such lienor or the amount of the claim of such prior purchaser at the prior tax sale.

## § C-65. Furnishing of abstract of title; additional expenses.

[Amended 5-27-1993 by L.L. No. 1-1993; 7-7-1994 by L.L. No. 2-1994]

The purchaser at any sale may, at the purchaser's expense, have an abstract of title or certified search prepared on such real property, and such expense (not to exceed \$750), together with any expense of mailing, service or publication, if certified (with receipt for payment attached) by the purchaser to the City Treasurer before such property is redeemed, shall be added to the charges against such property and to the amount required to redeem.

## § C-66. Despoliation of lands sold.

[Amended 5-27-1993 by L.L. No. 1-1993; 7-7-1994 by L.L. No. 2-1994]

- A. Neither the owner, occupant nor any other person shall have the right to despoil any lands sold at the tax sale by removing buildings or other improvements or cutting, removing or destroying timber or other valuable products growing, existing or being thereon at or after the time of sale.
- B. The purchaser at any such sale, or those claiming under him, shall not enter upon or exercise acts of ownership on such real property until after the expiration of the redemption period and the delivery of a deed under this Article **IV**. Any such purchaser whose bid therefor has been fully paid, his assigns or representatives may at any time before obtaining his deed cause to be served a notice on any person despoiling such real property or interested in making such despoliation, either personally or by leaving the same at the residence of such person or with any member of his family of suitable age and discretion. The notice shall describe the real property sold, shall state that the real property was sold for taxes by the City Treasurer and that an action to recover the value of the buildings, timber or other products destroyed or removed therefrom after the date of sale will be instituted against all persons concerned in such despoliation.



- C. If such real property is not redeemed, every person despoiling such lands or interested in making such despoliation upon whom service of the notice has been made shall be liable to pay to the holder of the tax sale certificate thereon the full value of any buildings, improvements, timber or other products cut or destroyed or removed therefrom from the date of the tax sale to the termination of such action and may be restrained by injunction from committing any waste thereon.

## § C-67. Notice of redemption.

[Amended 5-27-1993 by L.L. No. 1-1993; 7-7-1994 by L.L. No. 2-1994]

- A. To whom, by whom and when sent. The purchaser at the sale or any person claiming under such purchaser, no earlier than nine months after the date of the sale, shall serve a notice of redemption upon the following persons, as such persons may exist on the date such notice is sent: the owner of the real property (as such owner and at such address as may be shown on the then-current assessment roll); the holder of any mortgage, judgment or other lien appearing of record in the County Clerk's office (at the address of such person as shown in such mortgage, judgment or lien); the purchaser of any prior tax sale (according to the records of the City Treasurer); any occupant of such real property (to the address of such real property); and upon any other person shown, in records on file in the Cayuga County Clerk's office, to have an interest in or lien on such real property (to the address of such person as shown in the instrument creating such interest or lien). No other, further or different notice of the expiration of the time to redeem shall be required to be served or given.
- B. Contents. The notice of redemption shall:
- (1) Be in writing;
  - (2) Briefly describe the real property to which the notice of redemption applies;
  - (3) Identify the owner against whom the property was assessed at the time of the sale under which the purchaser acquired its interest in the real property;
  - (4) State the amount paid by the purchaser at the sale;
  - (5) State the amounts the purchaser is entitled to be paid under § C-63 above, including, without limitation, interest, the amounts paid by the purchaser after the purchase for taxes, interest, penalties, charges and to redeem the property from prior or subsequent tax sales;
  - (6) State the last day upon which the real property may be redeemed (which date shall be at least 90 days from the date such notice of redemption is served);
  - (7) Contain a concise statement of the aggregate amount required to be paid to redeem, as of the date of the notice, together with a per diem interest amount;
  - (8) State that unless the amounts required to be paid to redeem, with interest, are paid to the City Treasurer for the benefit of the purchaser or those claiming under the purchaser by the last day to redeem, the real property will be conveyed to the purchaser and the conveyance shall be absolute and the party to whom the notice is addressed shall be forever barred from redeeming such real property; and
  - (9) State that no other or further notice to redeem is required to be given.
- C. Service.
- (1) The notice of redemption shall be made as follows:
    - (a) By personal delivery to the person to whom it is addressed; or
    - (b) By mailing the notice, enclosed in a sealed envelope, postage prepaid, directed to such person at the address specified in Subsection **A** above, by certified mail, return receipt requested, with a copy sent by ordinary mail.
  - (2) Service on one joint tenant or tenant in common shall be service on all the joint tenants or tenants in common. Service on a landlord shall be service on his tenant.

- D. Affidavit. Within one month after the giving of such notice of redemption the purchaser shall file with the City Treasurer and with the Cayuga County Clerk's office a copy of the notice served and an affidavit stating that the notice was served in accordance with this section and specifying the person(s) served and the mode of service in each instance.
- E. "Occupant." The term "occupant" as used in this section means a person who has lawfully entered and is in possession of the real property to the exclusion of others.
- F. Certificate of redemption. Upon the redemption of a parcel of real property, the City Treasurer shall deliver to the person redeeming such real property a certificate of redemption which shall refer to the certificate of sale, briefly describe the real property and state that the real property has been redeemed.

## § C-68. Delivery of deed for unredeemed property.

[Amended 5-27-1993 by L.L. No. 1-1993; 7-7-1994 by L.L. No. 2-1994]

- A. If the real property sold for taxes is not redeemed by the date specified in the notice of redemption (which date shall be no earlier than 90 days after the notice of redemption is served), upon the written application of the purchaser to the City Treasurer to convert the purchaser's tax sale certificate into a quitclaim deed, and upon the City Treasurer being satisfied that the notice of redemption has been served in accordance with this Article **IV** and the necessary affidavit filed with the City Treasurer, the City Treasurer shall execute and deliver to the purchaser a quitclaim deed to the real property so sold and unredeemed, which quitclaim deed shall rest in the grantee an absolute estate in fee, free from all liens, claims, demands and encumbrances, subject, however, to:
  - (1) All claims of the county, City and state for taxes, liens or other encumbrances (except for those taxes which formed the basis for the sale of the unredeemed certificate);
  - (2) All easements and rights-of-way which were in existence at the time of the levy of the tax the nonpayment of which resulted in the tax sale; and
  - (3) The rights, if any, of the purchaser of a tax sale certificate issued subsequent to the tax sale certificate then being converted.
- B. Every such conveyance shall be executed by the City Treasurer under his/her hand and the Seal of the City of Auburn, and the execution thereof shall be acknowledged before a proper officer the same as other conveyances of real estate are acknowledged under the laws of New York and shall recite the fact of such assessment and tax, the failure to pay the same, the sale and that such real property has not been redeemed.
- C. The City Treasurer shall receive \$100 for preparing such conveyance.
- D. If application for a conveyance which demonstrates compliance with the requirements of this Article **V** is not made within five years from the date of the certificate of sale (except where such certificate was purchased at the sale by and is still held by the state, the County of Cayuga or the City of Auburn), the certificate of sale shall become void and no claim may be thereafter made on such certificate; provided, however, that any such certificate issued prior to January 1, 1993, shall not become void as provided above until January 1, 1998.
- E. In the event the City of Auburn is the purchaser, no written application under Subsection **A** above shall be required, and the conveyance shall run to and name the City of Auburn as grantee and the title thus acquired by the City may be disposed of at such time and upon such terms or shall be determined by the Council at any meeting thereof.
- F. Such deed shall be presumptive evidence that the sale and all proceedings prior thereto, from and including the assessment of the real property sold, and all notices required by law to be given previous to the expiration of the time allowed by law for the redemption thereof were regular and in accordance with all the provisions of law relating thereto; provided, however, that if application is made to a court of competent jurisdiction within two years from the recording of such conveyance, such conveyance shall be subject to cancellation by reason of the prior payment of the taxes, the nonpayment of which resulted in the sale; the illegal levy thereof by the City; or any defect in the proceedings affecting jurisdiction upon constitutional grounds. After two years from

the date of the recording of such conveyance, such presumption shall be conclusive, and all occupants, mortgagees and other persons interested in such real property shall thereupon be forever barred from all liens upon, claims against, interest in or right or title thereto.

- G. Every certificate of sale, certificate of redemption, certificate of cancellation of sale, certificate of termination of cancellation or deed executed in pursuance of this Article **IV** may be recorded in the same manner and as a deed acknowledged or proved before any officer authorized by law to take the proof and acknowledgment of deeds.
- H. Upon the receipt and recording of such a conveyance, the grantee may possess and enjoy for his/her own use the real property described therein and may cause the occupant(s) of such real property to be removed therefrom and the possession to be delivered to him/her in the same manner and by the same proceedings as in the case of a tenant holding over after the expiration of the term without the permission of the landlord.

## § C-69. Cancellation of sales.

[Amended 5-27-1993 by L.L. No. 1-1993; 7-7-1994 by L.L. No. 2-1994]

The City Treasurer shall not convey any real estate sold for taxes if he/she discovers before such conveyance that the sale was for any cause invalid or ineffectual to give title to the real property sold. In such event he/she shall cancel the sale and cause the purchase price (less any surplus moneys paid into Court under § C-61) to be refunded to the purchaser and at the same time issue, for recording in the Cayuga County Clerk's office, a certificate of cancellation of the sale.<sup>[1]</sup>

[1] *Editor's Note: Original §§ 73 and 74, which immediately followed this section, were repealed by L. 1943, c. 712.*

## § C-70. Setting aside cancellation of sale.

[Amended 5-27-1993 by L.L. No. 1-1993; 7-7-1994 by L.L. No. 2-1994]

- A. The City Treasurer may, and shall upon the application of any person aggrieved thereby made within one year of the date of such cancellation of sale, set aside any cancellation of sale made by him/her, or any predecessors in office, in any of the following cases:
  - (1) When cancellation was procured by fraud or misrepresentation;
  - (2) When cancellation was procured by the suppression of any material fact bearing on the case;
  - (3) When cancellation was made under a mistake of fact; or
  - (4) When cancellation was made upon an application which the City Treasurer or any predecessors in office had no jurisdiction or legal right to entertain at the time of such cancellation.
- B. Eight days' written notice of an application made pursuant to this section shall be served upon the person upon whose application such sale was canceled or his/her heirs or grantees.
- C. In the event that any of the parties to be served are not residents of the state or cannot after reasonable diligence be found within the state, such notice may be served by the publication thereof in a newspaper published in the City once each week for three weeks immediately preceding the day upon which such application is to be made and also by mailing a copy of such notice, first class mail, postage prepaid, to each of such parties at his last known place of residence. On or before the day of the first publication, all papers upon which such application is to be made shall be filed with the City Treasurer.
- D. The City Treasurer shall in all cases specify the grounds upon which such cancellation is set aside. Every such cancellation set aside by him/her shall in all respects have the same force and effect as though no cancellation had ever been made, except that the five-year period referred to in §§ C-60E and C-68D shall be tolled during the period between the issuance of the certificate of cancellation of sale and the issuance of the certificate of termination of cancellation. Upon setting aside such cancellation, the City Treasurer shall file a certificate of termination of cancellation in the Cayuga County Clerk's office.

## § C-71. Collection of unpaid taxes; other remedies; definitions.

- A. In personam actions to collect taxes or assessments. Whenever any tax or assessment levied or assessed upon any person or property in the City of Auburn with the fees, interest, penalties, charges and expenses which may by law be added thereto shall remain unpaid for six months after the warrant for its collection has been placed in the hands of the City Treasurer, the City Treasurer may maintain an action in the name of his office for and on behalf of the City of Auburn to recover the amount of such tax, interest, fees, penalties, charges and expenses remaining unpaid and uncollected against any person liable for such tax or the personal representatives or successor in interest respectively of such person, together with the attorney fees incurred or to be incurred by the City of Auburn in such action, in any court of competent jurisdiction, and the amount collected by any such suit shall be used and applied by the City Treasurer in the same manner as though the same had been collected by the sale of real estate. Nothing in this section contained shall be construed in any way to restrict, limit, or abridge any power otherwise possessed by any officer for the collection of taxes in the City of Auburn.
- B. Other remedies to collect taxes not effected. The methods, actions and procedures set forth in this Article **IV** are in addition to all other remedies and procedures available at law or in equity for the collection of taxes.
- C. Definitions. As used in this Article **IV**, the following terms shall have the following meanings:

### **PERSON**

Any individual, partnership, corporation, company, association, municipality or any other entity.

### **PURCHASER**

The original purchaser and the heirs, successors and assigns of the original purchaser.

## § C-72. Exemption of capital improvements from taxation on one- and two-family residential properties.

[Added 12-12-1993 by L.L. No. 4-1993]

- A. Residential buildings reconstructed, altered, or improved shall be exempt from taxation and special ad valorem levies to the extent provided hereinafter.
- B. Period and extent of exemption.
  - (1) Such buildings shall be exempt for a period of one year to the extent of 100% of the increase in assessed value thereof attributable to such reconstruction, alteration or improvement and for an additional period of seven years; provided, however, that the extent of such exemption shall be decreased by 12 1/2% of the initial exemption in each year during such additional period; provided, further, that such exemption shall be limited to \$80,000 in increased market value, or such other sum less than \$80,000 but not less than \$3,000 of the property attributable to such reconstruction, alteration or improvement, and any increase in market value greater than such amount shall not be eligible for the exemption pursuant to this section. For the purposes of this section, the market value of the reconstruction, alteration or improvement shall be equal to the increased assessed value attributable to such reconstruction, alteration or improvement divided by the Class I ratio in a special assessing unit or the most recently established state equalization rate or special equalization rate in the remainder of the state, except that where the state equalization rate or special equalization rate equals or exceeds 95%, then the increase in assessed value attributable to such reconstruction, alteration or improvement shall equal the market value of such reconstruction, alteration or improvement.
  - (2) The exemption shall be applicable to the reconstruction, alterations or improvements of residential dwellings or limit exemption to one or more of such categories; provided, further, that the term "improvements" shall include only that which would otherwise result in an increase in the assessed valuation of the real property and which consists of addition, remodeling or modernization to an existing residential structure to prevent physical deterioration of the structure or to comply with applicable building, sanitary, health and/or fire codes.

- (3) No such exemption shall be granted for reconstruction, alterations or improvements unless:
  - (a) Such reconstruction, alteration or improvement was commenced subsequent to the date the local law is enacted;<sup>[1]</sup>  
     <sup>[1]</sup> *Editor's Note: This section was added by L.L. No. 4-1993, adopted 12-12-1993.*
  - (b) The value of such reconstruction, alteration or improvement exceeds \$3,000; and
  - (c) The greater portion, as so determined by square footage, of the building reconstructed, altered or improved is at least five years old.
- (4) For purposes of this section the terms "reconstruction," "alteration" and "improvement" shall not include ordinary maintenance and repairs.
- C. Such exemption shall be granted only upon application by the owner of such building on a form prescribed by the State Board.<sup>[2]</sup> The original of such application shall be filed with the Assessor of the city, town, village or county having the power to assess property for taxation on or before the appropriate taxable status date of such city, town, village or county. A copy thereof shall be filed with the State Board.  
     <sup>[2]</sup> *Editor's Note: "State Board" refers to the State Board of Real Property Services.*
- D. If the Assessor is satisfied that the applicant is entitled to an exemption pursuant to this section, he shall approve the application and such building shall thereafter be exempt from taxation and special ad valorem levies as herein provided commencing with the assessment roll prepared after the taxable status date referred to in Subsection C of this section. The assessed value of any exemption granted pursuant to this section shall be entered by the Assessor on the portion of the assessment roll provided for property exempt from taxation.
- E. For the purposes of this section, "residential building" shall mean any building or structure designed and occupied exclusively for residential purposes by not more than two families.
- F. In the event that a building granted an exemption pursuant to this section ceases to be used primarily for residential purposes or title thereto is transferred to other than the heirs or distributees of the owner, the exemption granted pursuant to this section shall cease.

## Article V. Bonds

### § C-73. Authorization for bond issuance.

The authorization of the issuance of bonds shall be by ordinance.

## Article VI. Public Works and Parks

### § C-74. Department of Public Works and Parks.

The Department of Public Works and Parks shall include all streets, highways, bridges, sidewalks, curbs and gutters, sewers, disposal plants, subways, parks, playgrounds, and all public lands, buildings and works.

### § C-75. City Manager to supervise Department.

In addition to other powers and duties prescribed herein and by ordinance of the Council, the City Manager, as the administrative head of the City, shall have charge and supervision of the Department of Public Works and Parks and may, from the budget appropriation made therefor, improve, repair, alter, grade, regrade, pave, repave, surface, resurface, sprinkle, flush, oil, cover with some dust-allaying substance and clean streets, highways, squares and public places; repair, examine and keep in safe and suitable condition all bridges, public works and buildings; repair, protect, clean and keep in operative condition public sewers, drains, sewer laterals and sewage disposal plants; improve, repair and direct the upkeep of all parks, playgrounds, trees and grass plats in the highways; regulate and direct the

placing of poles, wires and all overhead construction in streets; direct the maintenance, repair, protection and use of subways and their appurtenances; and generally, subject to the ordinances of the Council, have charge of the expenditure and disbursement of all budget appropriations, not otherwise limited or designated, for the purpose of carrying out and giving effect to the purposes of such appropriations. Any work, repair or improvement which the City Manager is authorized herein to do or make may be done by City employees, equipment and agencies or by contract.

## § C-76. General supervisory powers of City Manager.

The City Manager shall cause all public works, buildings, bridges, streets and improvements, both local and general, to be inspected with sufficient frequency to ascertain their condition and shall cause the same to be kept in good condition and repair, reasonably safe for public use, and free from dangerous obstructions so far as may be. He or she shall have power to prescribe rules and regulations controlling and governing all public works of every kind and the upkeep, maintenance and use of all parks. He or she shall have general supervision and control of all work being performed for the City under any contract, and it shall be his or her duty to see that the terms and provisions of all such contracts are complied with on behalf of the City.

## § C-77. Notice to perform works on streets to be improved.

- A. After the Council or the City Manager has determined upon any pavement, repavement, surfacing or resurfacing of any street, the City Manager shall cause notice thereof to be published at least three times in a daily newspaper published in the City, specifying the street or streets, or parts thereof, to be paved, or otherwise improved, and requiring all persons, corporations and companies within the time stated therein, which shall not be less than 30 days, to do such excavation and lay such mains and pipes in such streets and make such repairs of, and connections with, existing gas, water mains, sewers and pipes as may be needed or required within the next two years, and also, within five days of such first publication, the City Manager shall cause such notice to be mailed to any corporations, companies and departments owning or having charge of mains and pipes in such streets, or franchise rights therein.
- B. After such improvement is completed, no person or company shall excavate therein for a period of two years, unless by permission of the Council to repair defects that may arise to mains, sewers, pipes or conduits, upon such terms and conditions as the Council may prescribe.

## § C-78. Removal of dangerous obstructions and conditions, snow and ice from streets and sidewalks.

- A. In case of the failure of any owner or occupant of any premises to comply with the provisions of any City ordinance pertaining to the care of such premises or trees and other appurtenances thereon and the sidewalks and streets appurtenant thereto, or requiring the cutting of weeds, the removal of rubbish, the maintenance of any private sewer or the removal or abatement of any prohibited or dangerous obstruction or condition in any sidewalk or danger or detriment to any person thereon, or private sewer or in the street, public highway, lane or alley in front of said premises allowed, caused or contributed to by such owner or occupant, or to keep such sidewalk free and clear of snow, ice, dirt or other matter which is or may become dangerous, or to keep the sewer lateral or laterals from said premises to the trunk sewer in said street, public highway, lane or alley free from any obstruction, the City Manager or any officer or employee of the City may forthwith remedy or remove such obstruction, prohibited or unsanitary condition, snow, ice, dirt or other matter and may for that purpose enter upon private lands and premises.
- B. The City Manager, whether the work to remedy or remove such obstruction, condition, danger or detriment is done by the City at its own instance or at the request of the owner or occupant of said premises, shall report the cost thereof and order such cost be collected and paid. The Superintendent of Public Works shall mail a statement to such owner or occupant to pay the cost, which shall become due and payable within 30 days from the mailing thereof. If not paid within such time, all costs which have become due and payable on or before April 30 of each year shall be added to the City tax and thereafter become a part thereof, to be

collected in the same manner as any unpaid City tax. The Council may, however, appoint days on which certain designated materials will be collected at the curb without charge.

## Article VII. Street, Sidewalk and Sewer Improvements

### § C-79. Paving streets; apportionment of costs.

The Council shall have power to pave, repave, surface and resurface streets, highways and public places. It may determine and provide that the entire cost of any such improvement shall be a general City charge or it may determine and provide that only a part thereof, which part, however, shall in no event be less than 50% of the entire cost, shall be a general City charge and that the balance be raised by assessment upon the abutting property or owners.

### § C-80. Scope of work in paving streets.

Unless otherwise provided by the Council, any such improvement shall include street intersections, the furnishing, laying and setting of curbs, relaying of sidewalks to required grade, grading the space between the sidewalk and curb and doing such other work as is incidental or essential to the completed improvement.

### § C-81. Designation of projects.

- A. Council to make determination. The Council may at any time designate any street, highway or public place, or any part thereof, as one to be paved, repaved, surfaced or resurfaced, and if it proposes that such improvement be made partly as a general City charge and partly as a charge or expense upon the abutting property, as herein provided, it shall direct that plans and specifications for such proposed improvement be made.
- B. Hearing; apportionment of costs. After such plans and specifications have been prepared and presented to the Council it shall order a hearing thereon and, after such hearing, may determine to make such improvement. It shall then fix the percentage of the entire cost to be paid as a general City charge and the percentage to be paid by assessment upon the abutting property or owner.
- C. Conclusiveness of determination. The determination by the Council whether an improvement to a street, highway or public place is a paving, repaving, surfacing or resurfacing within the contemplation of this article shall be conclusive.

### § C-82. Improvement may be done by contract or City; procedure for award of contracts.

Such improvement may be done by contract or by the City under the direction of the City Manager, as the Council shall prescribe. If it is ordered done by contract, the City Manager shall provide uniform terms and conditions for bidding, fix the security to be given, advertise for sealed proposals, receive, open at the time fixed, and tabulate such proposals and report them to the Council, with such recommendation as he may have to make. The Council shall designate the kind of improvement and the material to be used and, if a satisfactory proposal is received, may direct the execution of a contract for such improvement, in substantial accord with the plans and specifications for the particular kind of improvement designated.

### § C-83. Determination of cost.

After completion of such work, upon the certificate of the City Manager, the Council shall determine the entire cost of such improvement.

## § C-84. Payment by City and abutting owners.

After determining such entire cost, the Council may direct that the part of such cost which is a general City charge be paid from any budget appropriation for street improvement or such part of the cost may be financed pursuant to the Local Finance Law. The Council may also provide that any abutting owner liable for assessment on account of such improvement be given an opportunity to pay his or her proper share of such cost in advance of any issue of obligations and thereby be relieved from subsequent assessment.<sup>[1]</sup>

[1] *Editor's Note: Original § 87, Bond issue reserved, which immediately followed this section, was repealed by L. 1943, c. 710.*

## § C-85. Assessment and payment in installments by abutting owners and City.

If obligations are sold to defray all or part of the expense of such improvement, the Council shall ascertain the total amount of such bonds and interest until the last bond matures and the amount thereof to be paid:

- A. By the owner. By the abutting property, excluding, however, any property which may have paid its proper part in advance, and order that such amount be assessed as a local improvement upon such abutting property, according to linear foot frontage, as herein provided for local improvements, and be paid in substantially equal installments corresponding to the duration of the bonds;
- B. By the City. By the City, in case any part of the City's share of such entire cost has been included in such bond issue, and shall direct that such share be paid in the same number of substantially equal installments, by including one such installment in each year's tax budget thereafter until such issue is paid.

## § C-86. Other street improvements.

- A. Authority of Council. The Council shall have the power to open, extend, widen and straighten streets, highways and public lanes and to acquire necessary lands and rights therefor and to fix and determine what percentage of the total cost thereof shall be a general City charge and what percentage shall be assessed as a local improvement upon real property benefited by such improvement.
- B. Apportionment of costs; hearing. When it is proposed to make such improvement, the Council shall direct the preparation of plans therefor. After the completion of such plans, if the cost of such improvement, as determined, is to be paid in whole or in part by local improvement assessment upon real property, it shall order a hearing thereon. After such hearing, it may determine to make such improvement and provide for the acquisition of necessary lands and rights and for the performance of any necessary work in connection therewith and shall fix and determine the percentage of cost to be paid as a general City charge and the percentage to be paid by assessment as for a local improvement upon real property according to the benefits received.
- C. Determination of costs; financing; local assessments. Upon the completion of such improvement, it shall determine the cost, which cost may be financed pursuant to the Local Finance Law. The Council shall direct the Assessor to assess the percentage of such cost (which cost shall include the interest on any obligations issued to finance such improvement) to be paid by assessment as for a local improvement upon the real property benefited by such improvement as near as may be in proportion to the benefits received and shall make suitable provisions in the annual tax budgets for the payment of that part of such cost as a general City charge.

## § C-87. New sidewalks, curbs and gutters.

- A. Authority of Council. The Council may at any time it deems it advisable direct that new sidewalks, curbs and gutters, or any of them, be laid on any street or part thereof pursuant to plans and specifications therefor prepared and adopted, so as to make a uniform improvement in said street.



- B. Public hearing; award of contract. Before determining to make such improvement, the Council shall direct that a public hearing be given upon such proposed improvement. After such public hearing, it may determine to make such improvement either by contract or by the City under the direction of the City Manager; if by contract, the City Manager shall advertise for proposals and report, as herein provided. After receipt of such proposals the Council may direct the execution of a contract therefor.
- C. Determination of cost; financing; local assessment. Upon the completion of such work, it shall, upon the report of the City Manager, determine the cost thereof, which cost may be financed pursuant to the Local Finance Law. The Council shall certify to the Assessor the total cost of such improvement (which cost shall include the interest on any obligations issued to finance such improvement) and direct that the same be assessed as a local improvement upon the abutting or adjoining property which has not paid its share of such cost.
- D. Exemption. Notwithstanding the provisions of this Subsection **D**, or any provisions of the Auburn Municipal Code, where no continuous sidewalks exist on a street, any property owner desirous of installing a driveway on to their premises shall be exempt from installing a concrete sidewalk on a portion of the driveway as it would exist in the event that sidewalks were present on said street. The property owner desirous of installing said driveway shall obtain a permit from the City of Auburn Code Enforcement Office, and shall be responsible for the payment of any fee imposed thereon.  
[Added 6-26-2008 by Ord. No. 9-2008]

## § C-88. Requiring abutting owner or occupant to lay or repair sidewalk, driveway, curb or gutter.

- A. Authority of Council; performance of work by City where owner fails to perform the same. The Council may require the making, laying and grading of any sidewalk, street driveway between the sidewalk and gutter, curb, or curb and gutter, and the relaying, repairing and regrading of any unsightly, irregular, defective or poorly drained sidewalk, street driveway, curb or gutter, by the owner and occupant, or either, of any land in front of which it is desired to make such improvement or repair and fix, determine and prescribe the width and other dimensions thereof, the kind and quality of materials to be used, and the width and length of the several pieces to compose the same and provide that such improvement or repair be done within a fixed time of not less than two weeks. In case such work or improvement is not done within such time, it may cause the same to be done by the City Manager.
- B. Determination of cost; hearing. Upon the completion of such work the City Manager shall report the total cost thereof, including the expense of serving any notices, advertising and all other expenses connected therewith, and the Council, after notice of hearing to the owner or occupant of such property on the matter of such cost, shall determine such cost.

## § C-89. Collection of cost from owner.

- A. Adding to tax roll. Upon the determination of the cost of such improvement, the Council may direct that the total cost be paid by the owner and, if not paid within 30 days, that it, with 1% per month additional, be added to the next installment of City tax, and thereafter the same shall be, and be known as, tax, and shall be collected in the same manner as any unpaid City tax.
- B. Alternative procedure; assessing as local improvement. The Council may also provide that such cost be paid by assessment as a local improvement, by directing that it be included with the costs of like or similar improvements to other parcels of property, and the City Treasurer may be reimbursed for such costs from the proceeds of obligations issued pursuant to the Local Finance Law for such improvements. The Council shall determine the total amount of such obligations with interest to final maturity and other expenses and by resolution direct the Assessor to assess such amount upon such various parcels as a local improvement proportionately according to the cost of each improvement, as determined by the Council.

## § C-90. Improvements of sidewalks, curbs and gutters at request of owners.

The Council may by ordinance prescribe the manner and method in which sidewalks, curbs and gutters, or any of them, may be built, improved and repaired for abutting owners who desire any such improvement done with the aid of the City and may provide, by ordinance, for the determination of the cost upon completion, for payment thereof and for the assessment of such cost and its proportionate share of interest in any obligations issued and of any other expense in connection therewith.

## **§ C-91. Sewerage system.**

- A. The sewerage system of the City, as now laid out and constituted, whether by law, ordinance or resolution, is continued, with power in the Council to change, alter and amend any sewerage improvement at any time.
- B. If the Council proposes to construct, build or rebuild any sewer, drain or sewage treatment facility, or other improvements, it shall cause plans and specifications therefor to be prepared and filed in the office of the City Clerk. After such filing, and after a public hearing thereon, it may determine to construct, build or rebuild such sewer, drain or sewage treatment facility, or other improvement, and cause the work to be done either by contract as herein provided or by the City under the direction of the City Manager. Upon the completion thereof, it shall, upon the certificate of the City Manager, determine the cost, which may be financed pursuant to the Local Finance Law.

## **§ C-92. Assessment of costs for local improvements to sewerage system.**

If the improvement is not entirely for the benefit of the City at large, the Council shall fix the amount to be raised by special assessment upon the property benefited and the amount, if any, to be borne by the City and direct such assessment by the Assessor as a local improvement according to benefits received.

## **§ C-93. Assessment of cost to property owners.**

[Added 10-30-1997 by L.L. No. 2-1997]

At the request of the property owner to build, construct, reconstruct sewer laterals in need of repair from the main to inside the structure situate thereon, to have such work or improvement done by the City or by contract, to pay for the same from City funds and assess such total costs against the property benefited and to further provide that the cost of any such work or improvement be paid at once or in annual installments as an assessment upon the real property of said owner.

# **Article VIII. Local Improvement Assessments**

## **§ C-94. Definition.**

The term "local improvement" shall mean any improvement, work or benefit, whether done by the City under the direction of the City Manager or by contract, the cost of which, or part thereof, by this Charter, by ordinance of the Council, or otherwise by law, is to be borne by the abutting property, or the property benefited, or its owner.

## **§ C-95. Certification of cost to be assessed.**

If not otherwise provided by ordinance, after the completion of any local improvement, the Council shall by resolution certify to the Assessor the part of the total cost of such improvement to be assessed against the abutting property, or the property benefited, with the exception of the property which may already have paid its proper share of such improvement, which such property shall be briefly described by name or number.

## **§ C-96. Assessment procedure.**

- A. Preparation of assessment roll. Upon receipt of such resolution, the Assessor shall forthwith proceed to assess the amount directed upon the real property adjoining or abutting upon such improvement, or the property benefited, as the case may be, including all real property otherwise exempt from taxation, whether owned by charitable, benevolent, religious or educational corporations, boards or societies, or persons, but excluding any property which the Council, or the City Manager, shall certify has paid its proper share, and shall make and subscribe an assessment roll thereof.
- B. Public hearing; notice. Upon completion of such assessment roll, the Assessor shall fix a time of hearing thereon and shall cause notice thereof to be published at least twice in a daily paper of the City, such first publication being not less than five days before the day of hearing, and shall, so far as practicable, cause notice thereof to be mailed to each person appearing on such tentative roll at the time of the first publication.

## § C-97. Corrections; completion of assessment roll; warrant.

- A. Conduct of hearing; corrections or changes; filing; rehearing. Upon such hearing, the Assessor shall hear the objections of interested parties and may adjourn from time to time to complete such hearing. After such hearing he or she shall make such corrections, changes and additions as appear to him or her fair and correct and complete and verify such roll and file the same with the City Manager for his or her approval. If the City Manager does not approve, he or she may return it to the Assessor for a rehearing or for correction.
- B. Warrant for collection. If the City Manager approves, he or she shall sign such roll, together with a warrant to the City Treasurer, or officer performing like duties, to collect the several amounts in such roll.

## § C-98. Payment in installments.

If by reason of this Charter, or by ordinance of the Council, or otherwise, such assessment is payable in installments, such roll shall show the total amount as well as the amount of each installment with the date it becomes due and payable. If bonds are issued, unless otherwise directed, the number of installments in which any local improvement assessment is payable shall correspond to the number of years in the bond issue for such improvement.

## § C-99. Due dates for installments; lien; enforcement.

If bonds are issued, the first installment shall become due and payable two months prior to the maturity of the first bond and each installment annually thereafter. At the time each installment becomes due and payable it shall become a lien upon the property upon or against which it is assessed, enforceable and collectible by foreclosure, as a mortgage in default, by action or by sale. If not paid within 30 days after the same becomes payable, then 1% per month thereafter shall be added. If not paid at the time the next City tax becomes payable, it, with all fees and additions, shall be added to such tax against such property and become a part thereof and its payment enforced by sale or other proceeding the same as any unpaid City tax.<sup>[1]</sup>

[1] *Editor's Note: Original § 102, Sewer district improvements in districts, which immediately followed this section, was deleted since the City has only a Citywide sewerage system.*

## § C-100. Determination of share of improvement to be borne by benefited properties.

In paving, repaving, surfacing and resurfacing, the share of the abutting property or the assessment against such property shall be determined according to the linear or foot frontage; in sidewalk, curb and gutter assessment, proportionately according to the cost of each improvement, entering into the total of such bond issue; in all other matters, according to the benefits received, unless otherwise directed by the Council. The Council shall have the right and power to direct the principle to govern in completing such assessments for local improvements.

## § C-101. Other improvements not specifically provided for.

In the case of any local improvement or benefit not herein specifically provided for which is ordered and made or furnished by the City under any power given herein or otherwise by law, the Council shall have power to determine the cost thereof, the part to be paid as a general City charge and the part to be paid by local assessment and to prescribe how, when and against what property the same shall be assessed and to direct the completion by the Assessor of an assessment thereof.

## **§ C-102. Payment of assessment in one sum.**

The Council may prescribe by ordinance so far as is practicable that at any time after the completion of a local improvement any property owner who desires to pay his or her proper or proportionate share of such improvement in one sum may do so and that such property owner will thereby be relieved from any local assessment therefor, anything in this Charter to the contrary notwithstanding, and may direct the City Manager in reporting the cost of such improvement to make a tentative return of the share of, or charge against, each parcel of abutting property, excepting where the amount of such share or charge is ultimately to be determined upon the principle of benefit received, the purpose of this provision being to allow property owners chargeable with a part of such cost to meet and pay such part in a lump sum without the additional charge for interest arising from a bond issue. If bonds are issued for such local improvement prior to the date of the payment of such lump sum, such property owner shall, in addition thereto, be charged with interest on such proportionate share at the rate payable on the bonds issued therefor and up to and including the next succeeding date on which interest on such bond issue becomes due and payable after the payment of such lump sum.

## **Article IX. Police and Fire Departments**

### **§ C-103. Departments established; administrative head; personnel.**

There shall be a Police Department and a Fire Department. The City Manager shall be the administrative head of each. The Council shall by ordinance designate the number of persons, with their rank and salaries, to be appointed to serve in each said Department. All appointed to serve in the Police Department shall be known as police officers, and all appointed to serve in the Fire Department as fire fighters.

### **§ C-104. Rules for management.**

Subject to the ordinances of the Council, the City Manager shall make such rules and regulations for the management of each department as he deems advisable or necessary.

### **§ C-105. Records.**

Records of all proceedings, appointments, removals and other activities shall be kept for each department.

### **§ C-106. Disciplinary proceedings.**

- A. Any member of either department may be reprimanded or suspended with or without pay for a period not exceeding one month pursuant to the Civil Service Law, by either the City Manager or the Chief of the respective department under the City Manager. In case of suspension by the Chief, such fact shall be immediately reported by him or her to the City Manager, who shall have power to confirm, modify or revoke such suspension.
- B. The City Manager, pursuant to the Civil Service Law, shall have power to remove or dismiss any member of either department at any time, but no order of dismissal from service shall be made until an opportunity is given to such member to be heard, upon a notice of six days after charges preferred.

## **§ C-107. Powers of police officers.**

Sworn officers of the Police Department shall possess the powers, perform the duties and be subject to the liabilities of police officers pursuant to the Criminal Procedure Law and any other applicable laws of the State of New York.

## **§ C-108. Police authority in City-owned property outside corporate limits.**

The City Manager may arrange to police and to preserve order in any park, cemetery or other property owned, possessed or controlled by the City outside of the corporate limits of the City, and any such officer may make arrest for any violation of law committed in or near any such park, cemetery or other property.

## **§ C-109. Authority of Fire Chief and subordinates.**

The Chief of the Fire Department and any of the members thereof acting under him or her or by his or her direction, or that of the City Manager or Fire Marshal, or person performing the duties corresponding to those of the Fire Marshal, shall have the power in case of a fire or other emergency to enter any building within said City for the purpose of examining the same to ascertain the construction thereof, fire risk, exits, and other matters concerning public safety and to extinguish any fire therein or in any adjoining building. At any other time, they or any of them may do so with the consent of the owner or occupant or pursuant to a warrant issued by a court of competent jurisdiction.

## **§ C-110. Places of public assembly.**

The City Manager shall have the power to compel the owner or lessee of any theater, hotel, place of amusement or place where people congregate to make such changes by way of additional means of exit, fire escapes, or both, as may be required by law or state regulations and to provide and order that until such changes shall be completed the same be closed to the public. Action may be maintained in the name of the City to restrain, by injunction, any violation of such order or regulation.

## **§ C-111. Police and fire pension funds.**

- A. The relief and pension funds of the Police and Fire Departments, with their respective rules and regulations, are continued. The Council shall have power to make annual appropriations to each such fund in the City budget; to provide by ordinance for the management and control of such funds by trustees or directors; to amend, alter and change existing rules and regulations and to prescribe, adopt, and establish new rules and regulations; and to provide for contributions thereto and distributions therefrom.
- B. All fines imposed on members of the respective departments, and gifts in recognition of service, shall be paid to the credit of the respective fund. The tax required to be paid by foreign fire insurance companies, associations, individuals, and agents to the treasuries of fire departments of cities and all similar taxes now or hereafter required by any statute shall within the City of Auburn be paid to the City Treasurer thereof, who shall place the same to the credit of the fire fighters' relief and pension fund, except that he or she shall pay to the Treasurer of the Fire Fighters Association of the State of New York 10% of such amount so received for the support and maintenance of the Volunteer Fire Fighters Home at Hudson, New York.

## **§ C-112. Destruction of buildings deemed hazardous at fires; reimbursement.**

The City Manager, or Chief in charge of the Fire Department at any fire, may order and direct the pulling down or destruction of any buildings which may be deemed hazardous or likely to communicate fire to any other building or buildings. No action shall be maintained either against the City of Auburn or any person therefor, but the owner or any person interested in any building so pulled down or destroyed or in any personal property therein may, within three months, but not thereafter, apply to the Council by petition for relief or reimbursement therefor, stating the interest of the petitioner in said building or the personal property therein destroyed, with the particular description of the property destroyed and its value.

## § C-113. Determination of just compensation to be paid.

The Council may agree with such petitioner as to the amount of just compensation to be paid for any building or personal property so destroyed, but in case the Council is unable to agree with any petitioner as to the amount of just compensation, then said petitioner or the Council may make application to the Supreme Court to ascertain the just compensation to be paid to the said petitioner or owner of said building or personal property therein destroyed in the same manner and to the same court as is provided in Article 5 of the Eminent Domain Procedure Law.<sup>[1]</sup>

[1] *Editor's Note: Original § 117, relating to powers of commissioners under the Condemnation Law of the State of New York, which immediately followed this section, was deleted since this law was superseded by the Eminent Domain Procedure Law.*

## § C-114. Payment of compensation or judgment; financing; assessment as local improvement.

Upon the entry of the judgment of the Supreme Court, or upon an agreement with any petitioner for compensation, the amount due the petitioner may be financed pursuant to the Local Finance Law, and the Council may determine how such award, and any interest to grow due thereon, and other expenses connected therewith, shall be paid, whether the same shall be a general City charge or a charge to be assessed entirely by the property benefited as a local improvement, or in part a general City charge and in part a local improvement charge, and, if in part a local improvement, it may direct that the same be assessed and collected as such upon the property benefited in the manner herein prescribed for local improvement assessments or in any other manner it may deem just and equitable. If a general City charge, it shall provide for the payment of the same by annual installments thereof in the annual tax budget.

## Article X. Health

### § C-115. Abolition of Department of Health.

The City of Auburn, having elected to become a part of the Cayuga County Health District, hereby abolishes the City Department of Health as a local health district, and all powers of such local board of health shall devolve upon the Board of Health of the Cayuga County Health District, and all powers of the local health officer of the City health district shall devolve upon the County Health Commissioner.<sup>[1]</sup>

[1] *Editor's Note: Original §§ 120 and 121, which immediately followed this section, were deleted as no longer applicable to the city.*

## Article XI. Water

### § C-116. Council to have supervision of water system.

The Council shall have the power, and it shall be its duty, to take over, arrange and provide for the management, control and operation of the entire water system and plant of the City of Auburn to furnish and supply, and to continue to furnish and supply, a sufficient quantity of good and wholesome water to the City of Auburn and the people thereof, except that it shall not enact or enforce any local law or ordinance or resolution for any purpose

pertaining in any manner to the fluoridation of the water under the control of the City or of the Water Department of the City government. For this purpose the Council shall have power to adopt ordinances, rules and regulations for the protection and preservation of such waterworks, system, property, watershed, and the sources from which such water is furnished and to acquire such additional lands and rights as it may deem essential, to purchase, install and operate machinery, pumps, mains and all other equipment and property necessary or essential in its judgment to furnish and supply such water and to perform and discharge the duties herein imposed and to exercise the powers herein conferred. It may also furnish and supply water to owners and occupants of property lying outside of, but adjacent to, the City of Auburn.

[1] *Editor's Note: Original § 124, which immediately preceded this section, was deleted since the provision relating to a Water Board expired 1-1-1921.*

## § C-117. Water Department; powers and duties of City Manager.

The City Manager shall be the administrative head of the Water Department. He or she shall appoint such officers and employees as the Council decides are needful or essential in the conduct and management of such Department, at salaries to be fixed by the Council, and may from time to time change or remove any such appointees or employees. The Civil Service Law, rules and regulations shall apply so far as practicable to all positions in this Department.

## § C-118. Water Department budget.

- A. On or before the first day of June in each year, the City Manager shall prepare and submit to the Council of said City an estimate or proposed budget for the Water Department of said City for the fiscal year beginning the following year July 1, it being the intention of this section to make the fiscal year of said Water Department the same as the City's fiscal year as provided in this Charter. Such estimate or proposed budget shall show, so far as ascertainable:
  - (1) The probable revenue to the Water Department from all sources.
  - (2) An itemized statement of the amount needed for all operating expenses of said Department, including a sum for contingent expenses and a sum for the payment of principal and interest on its bonded indebtedness.
- B. The Council shall thereupon order public hearings thereon and direct that notice thereof shall be published at least twice in a daily newspaper published in said City not more than four days before the date of such hearing. After hearing any taxpayer at said hearing in reference thereto, the Council may adopt such estimates as submitted or increase, diminish, reject or otherwise modify or amend the same and adopt the estimates as so modified or amended. When such estimates as presented or amended shall have been adopted, the same shall be entered in full in the minutes of the Council and published in its proceedings, and the several sums in such final estimates so adopted shall be and become appropriated for the several purposes named in such estimates. Such estimates shall be known as the "Water Department budget."

## § C-119. Rules, regulations and ordinances.

The Council shall adopt such rules, regulations and ordinances as may be necessary or appropriate in the management and operation of the Water Department.

## § C-120. Water rates, rents and charges.

- A. Council to establish water rates. The Council shall determine and fix the rates, rents and charges and change or amend the same, from time to time, and shall have power to arrange and direct, by ordinance, that all delinquent water rates, rentals and charges may be added to the annual City tax on the property to or for which such water was furnished or service rendered, after a hearing thereon to the owner of such property. The Council shall have power to provide for such hearing and to adopt rules and make provisions to govern

and control the same.

- B. Use of income. The income from water rates, rents and charges and the proceeds from the sale of water bonds shall be kept separate and apart from other City funds and revenues and shall be used only for the upkeep, maintenance, extension and benefit of the water system, including the sinking fund for the retirement of water bonds, and the payment of bonds, and for the payment of earnings to which the City of Auburn may be entitled under and by virtue of § 94 of the General Municipal Law of the State of New York, from and of the operation of the Water Department of said City.

## § C-121. Acquisition of water system by City.

All property and rights acquired by the Water Board in the management and operation of such water system under Chapter 479 of the Laws of 1892, as revised and supplemented by Chapter 36 of the Laws of 1894, as amended, shall be, and continue to be, the property of the City of Auburn in whatever name such property or rights were or may be acquired, and the City of Auburn shall succeed to all property and rights owned or possessed by the said Water Board and be and become the owner thereof. The Council shall provide for the payment of all obligations of the said Water Board owing on January 1, 1921, including water bonds, and for the maintenance of the sinking fund for the retirement of water bonds, as required by said repealed water acts.

## § C-122. Assessment of cost to property owners.

[Added 10-30-1997 by L.L. No. 3-1997]

At the request of the property owner to construct, build, reconstruct water service pipes in need of repair from the main to the meter, to have such work or improvement done by the City or by contract, to pay for the same from City funds and assess such total costs against the property benefited and to further provide that the cost of any such work or improvement be paid at once or in annual installment as an assessment upon the real property of said owner.

## Article XII. The Soule Cemetery

### § C-123. Cemetery continued; authority of City.

The cemetery of the City of Auburn constituted under Chapter 57 of the Laws of 1880 and known as "The Soule Cemetery" is hereby continued, and the City is hereby authorized and empowered to hold and to continue to hold all the lands, rights and property acquired by it in connection with such cemetery and generally to manage and provide for such cemetery. All lands and rights acquired by the City, and all sales and conveyances of lots in such cemetery for burial purposes, pursuant to the provisions of such Act are hereby recognized, ratified and confirmed.

### § C-124. Cemetery lands part of City territory.

- A. All the lands and rights included within such cemetery, whether acquired under or pursuant to said Chapter 57 of the Laws of 1880 or otherwise, shall continue to be deemed and held as a part of the territory of such City, in addition to any other lands herein described as constituting the City of Auburn. All of such land shall continue to be under the jurisdiction of the City and be subject to the jurisdiction of its courts and officers as fully to all intents and purposes as any part of said City, and all the provisions of this Charter shall apply thereto, so far as practicable or available.
- B. Any additional land contiguous to such cemetery hereafter acquired for the purposes of such cemetery and used in connection therewith may be annexed to the City of Auburn pursuant to Article 17 of the General Municipal Law.

### § C-125. Cemetery lands exempt from taxation.



All such cemetery lands and property shall be exempt from all taxation, including school, highway and local improvement assessments.

## § C-126. Management and regulations.

- A. Council to provide for management. The Council shall provide for the erection, construction and maintenance of all necessary or desirable buildings, vaults, roadways, paths, and fences and for the planting of shrubs, trees and grass and for other ornamentation; provide for surveys, maps, and plots and make division into lots and parcels; sell lots and plots for burial purposes and fix the price thereof; permit burial without charge where means to pay are not available; make appropriation in the annual tax budget for its support and upkeep and needed repairs to grounds, buildings and approaches and give effect to any of the powers or duties herein specified; provide for an accurate system of accounting covering all financial transactions of the cemetery; accept and receive money, funds and property for such cemetery, in trust or otherwise, and hold and administer the same; regulate the use of such cemetery, interments, disinterments, and the erection of structures, monuments, fences and markers; generally provide for the protection of such cemetery and its property and the property and rights of individual lot owners; regulate and control the uses thereof; and prohibit the use thereof for anything other than for cemetery purposes.
- B. Ordinances, rules and regulations. The Council shall have power to exercise any of the foregoing powers, rights and duties by ordinance, rules and regulations and to provide for the violation thereof by fine or imprisonment, or both. All provisions of this Charter in reference to ordinances shall apply to any such cemetery ordinance.

## § C-127. Law repealed in part.

Chapter 57 of the Laws of 1880, excepting § 1 and the last sentence of § 7, is hereby repealed, but such repeal shall in no manner affect, abridge, alter or impair any right of the City therein or any right or interest acquired by any person in or to said cemetery, or to any lot therein, or in or to any structure or property erected thereon.<sup>[1]</sup>

[1] *Editor's Note: Original Art. XIV, City Court, which immediately followed this section, was deleted as superseded by L. 1972, c. 543 and the Uniform City Court Act.*

## Article XIII. Miscellaneous

## § C-128. Officer prevailing in action entitled to double the costs.

Every person elected or appointed to any office under this Charter who shall be sued for any act done or commenced by him or her by virtue of his or her office and who shall have final judgment rendered in his or her favor, whereby he or she shall be entitled to costs, shall recover twice the amount of his or her taxed costs.

## § C-129. Prior written notice of defects.

- A. Legislative declaration. Where claims for bodily injury or damage to property are asserted against the City arising out of alleged defective conditions of property owned or constructed by or in the care, custody or control of the City, adequate prior notice to the City of any such conditions is of substantial importance to allow the City the opportunity to investigate and correct such conditions, if found to exist. Whether the City has received actual or constructive notice of such alleged defective conditions is often a question of fact which can lead to uncertainty and possible unwarranted finding of liability against the City. To assure that the City receives actual prior notice of an alleged unsafe or defective condition and is able to respond in a prompt and reasonable manner, such prior notice shall be in writing. It is the purpose of this section to require that notice of unsafe or defective conditions of City property be given to the City by prior written notice actually received by the City.
- B. Definitions. For the purposes of this section, the following words, phrases and terms and their derivations shall have the meanings given herein:

**CITY HIGHWAY**

A highway, street, road, cul-de-sac, drive or other roadway maintained by the City, whether or not such highway has been formally dedicated to the City. This definition shall include bridges, shoulders, curbs, gutters, culverts, signs and other traffic control devices and all other things appurtenant to a highway.

**CITY PROPERTY**

All City highways, bridges, culverts, sidewalks, parking areas, playgrounds, parks and all other real property owned, leased, used, occupied or maintained by the City or over or through which the City has an easement or right-of-way and all buildings, structures, fixtures, personal property and appurtenances thereto owned, leased, used, occupied or maintained by the City.

**UNSAFE CONDITION**

Any defective, hazardous, dangerous or obstructed condition, including such conditions as may have been created by an act or omission of any employee or officer of the City, and including such conditions as may result from inadequate or improper design, maintenance or repair or from the existence of snow or ice.

- C. Written notice of defective condition required for injuries on highways and City property. No civil action shall be maintained against the City of Auburn for damages or injuries to person or property sustained by reason of any highway, bridge, culvert or any other property owned by the City of Auburn being defective, out of repair, unsafe, dangerous or obstructed unless written notice of such defective, unsafe, dangerous or obstructed condition of such highway, bridge, culvert or any other property owned by the City of Auburn was actually given to the City Manager and there was a failure or neglect within a reasonable time after the giving of such notice to repair or remove the defect, danger or obstruction complained of, and no such action shall be maintained for damages or injuries to persons or property sustained solely in consequence of the existence of snow or ice upon any highway, bridge, culvert or any other property owned by the City of Auburn unless written notice thereof, specifying the particular place, was actually given to the City Manager and there was a failure or neglect to cause such snow or ice to be removed or to make the place otherwise reasonably safe within a reasonable time after the receipt of such notice.
- D. Prior written notice required. No civil action shall be maintained against the City or against the City's officers or employees for personal injury, including death or damage to property, related to, caused by, resulting from or arising out of any property owned or constructed by the City, or involving property in the care, custody or control of the City, being defective, out of repair, unsafe, dangerous, obstructed or improperly maintained unless, prior to the occurrence of the injury or damage, the City shall have been given actual written notice of the alleged condition complained of and shall have failed or neglected within a reasonable time after such written notice to repair or remove the condition.
- E. Notice; contents. The notice required by this section shall contain the following:
  - (1) The full name and address of the claimant;
  - (2) The particular property of the City and its location claimed to be defective, out of repair, unsafe, dangerous or obstructed;
  - (3) The time such condition was first observed or made known to the claimant;
  - (4) A statement of the particulars in which the property is defective, out of repair, unsafe, dangerous or obstructed.
- F. Service of notice. The written notice provided for by this section shall be served by personal service within the City of Auburn upon the City Manager or his (or her) designated representative.
- G. Record of notice; presentation to the Council.
  - (1) The City Manager shall keep and maintain a record of all written notices received pursuant to this section, which record shall state the date of the receipt of the notice, the nature and location of the conditions stated to exist and the name and address of the person from whom the notice is received. The record of each notice shall be preserved for a period of at least three years after the date it is received.
  - (2) The City Manager shall cause all written notices received by him (or her) pursuant to this section to be presented to the Council within five days of the receipt thereof or at the next Council meeting, whichever

shall be sooner.

- H. Repeal of existing requirements not intended. Nothing contained in this section shall be held to repeal or modify or waive any existing requirement or statute of limitations which is applicable to these classes of actions, but, on the contrary, this section shall be held to be additional requirements to the right to maintain such action, nor shall anything herein contained be held to modify any existing rule of law relative to the question of contributory negligence or to impose upon the City any greater duty or obligation than otherwise imposed by law.

## § C-130. Inhabitants not disqualified from acting as judge in actions involving City.

No person shall be an incompetent judge by reason of his or her being an inhabitant or freeholder in the City of Auburn in any action or proceeding in which said City is an interested party.

## § C-131. City considered town for certain purposes.

- A. The said City, except as is otherwise in this Charter provided, shall be considered one of the towns of Cayuga County. The fees and expenses of apprehending, examining, trying and committing offenders against any law of the state in said City, and of their confinement, properly chargeable against the County of Cayuga shall be audited, allowed and paid by the County Legislature of said county in the same manner as if such expenses had been incurred in any town in said County of Cayuga.
- B. To facilitate the presentation of the claim of the City against the County of Cayuga for such fees and expenses, the City Judges shall keep an accurate record of all felony and other cases which are properly chargeable against the County of Cayuga and of the fees and expenses of examining, trying and committing persons under such charges, and the head of the Police Department shall keep a like record of the fees and expenses of apprehending all persons so charged.<sup>[1]</sup>

[1] *Editor's Note: The original last paragraph of this section, pertaining to the selection of jurors, was deleted as covered by the Judiciary Law.*

## § C-132. Service of notice on corporations, associations, copartners, joint tenants or tenants in common.

When corporations, associations, copartners, joint tenants or tenants in common are to be served with a notice under any provisions of this Charter or under the direction of the Council, it shall be deemed a sufficient, valid and legal service of such notice to serve a copy thereof upon the president, cashier, treasurer, one of the directors or the managing agent of such corporation or association or upon any one of such copartners, joint tenants or tenants in common.

## § C-133. Affidavits of service or publication of notice.

When filed in the office of the City Clerk, an affidavit of service of any notice, either personally or by mail, as required, or the affidavit of publication made by the publisher, his or her clerk, editor or foreman, showing the required publication, shall be presumptive evidence of such service or publication, as the case may be, in all courts and places. A certified copy of such affidavit made by the City Clerk may be read in evidence with like force and effect as the original on file in his office.

## § C-134. Manner of reading acts of Council in evidence.

Every act, ordinance, bylaw, public regulation, resolution or proceeding of the Council of the City of Auburn may be

read in evidence in all courts and places in this state either:

- A. From the record of the proceedings of the Council;
- B. From a copy of such act, ordinance, bylaw, public regulation, resolution or proceeding certified by the Mayor or City Clerk, with the Seal of the City affixed; or
- C. From the printed volume of ordinances, bylaws and public regulations printed by authority of the Council.

## **§ C-135. Present officers and employees continued.**

All elective officers of the City in office at the time this Charter takes effect shall be continued for the balance of the terms for which elected, respectively, except as herein specially provided. All other officers and employees in the service of the City at the time of the adoption of this Charter shall be continued the same as though originally appointed hereunder.

## **§ C-136. Ordinances, regulations and bylaws continued.**

All ordinances, regulations and bylaws of the City, including those established and adopted by the Water Board of the City, in force at the time of the adoption of this Charter and not inconsistent herewith are continued in full force and effect. Any ordinance, regulation or rule inconsistent with the provisions of this Charter is hereby repealed.

## **§ C-137. Acts to be done by officer not provided for.**

Wherever in this Charter it is provided that any act or thing shall be done by or any powers are conferred or duties imposed upon any officer for whom specific provision is not made either in this Charter or in the Optional City Government Law, then such act or thing shall be done by and such powers shall be conferred and duties imposed upon such officer as may be appointed pursuant to ordinance, or otherwise, to perform like or similar duties. Wherever in any ordinance, regulation, resolution or bylaw or in any statute it is provided that any act or thing may be done or performed or any license, permit or permission granted by any body, officer or head of a department, the same may be done, performed or granted by such body, department or officer if continued under this Charter or any ordinance, and, if not so continued, then by the body, department or officer exercising and discharging like powers, functions or duties.

## **§ C-138. Exercise of powers pertaining to franchises, bonds, contracts or agreements.**

- A. Wherever it is provided in any franchise given by the City, or in any bond, contract or other agreement in favor of the City, that any act or thing shall be done or demand or notice made or given by any officer of the City therein named, such act may be done or demand or notice made or given by the officer, body or department named, if there is such, and, if not, by the officer, board or body possessing or discharging like powers, functions or duties.
- B. Such franchise, bond, contract or agreement shall not in any manner be impaired by the passage of this Charter but shall continue in full force, and the duties imposed and the powers conferred in and by any such franchise, bond, contract or agreement may thereafter be exercised and discharged by the officer, body or department upon whom or which is conferred like powers, functions or duties under the provisions of this Charter or any ordinance, without regard to the official name or designation of such officer, body or department.

## **§ C-139. Charter to supplement Optional City Government Law.**

The qualified voters of the City of Auburn having heretofore adopted the simplified form of government defined as

Plan C under the Optional City Government Law, known as "Chapter 444 of the Laws of 1914," this Charter is intended, besides consolidating and revising the special acts relating to the City of Auburn and constituting its Charter as there defined, to supplement the provisions of such Optional City Government Law, particularly in reference to the plan therein named and defined as Plan C, and is to be considered and construed in connection therewith, in extension thereof and as supplemental thereto, and the provisions of such general law shall be applicable to the City as far as may be.

## § C-140. When effective.

This Charter shall take effect immediately.<sup>[2]</sup>

[1] *Editor's Note: The Charter became law 5-3-1920 with the approval of the Governor.*

[2] *Editor's Note: The Charter Addendum, containing portions of the Optional City Government Law, is on file in the office of the City Clerk.*